TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1905.

No. [illegible] 33.

PEORIA GAS AND ELECTRIC COMPANY, APPELLANT,

vs.

CITY OF PEORIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED MAY 23, 1904.

(19,367.)

(19,367.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 269

PEORIA GAS AND ELECTRIC COMPANY, APPELLANT,

vs.

CITY OF PEORIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Caption	1	1
Placita	4	1
Order appointing Judge Humphrey to aid the judges of northern district of Illinois	4	1
Cost bond	6	2
Subpœna	8	2
Marshal's return	9	3
Bill of complaint	11	4
Ordinance of April 18, 1899	12	5
Agreement of acceptance, April 20, 1899	24	13
Bond required by ordinance	26	13
Ordinance of September 4, 1900	30	17
Answer	38	21
Letter of Clarke *et al.* to Mayor and City Council, April 18, 1899	41	23
Notice of agreement	45	26
Notice of motion for leave to amend bill	52	30
Order granting leave to amend bill, &c.	55	31
Amendment to bill of complaint	57	32

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 20, 1904.

	Original.	Print
Order denying motion to dismiss	61	34
Order for injunction	63	35
Bond for injunction	65	35
Writ of injunction	69	36
Replication	72	38
Order appointing special commissioner	74	38
Notice of motion for rule to close proofs	76	39
Motion to require defendant to close proofs	78	40
Affidavit of Edward C. Ritsher	80	40
Rule to close testimony	83	42
Order overruling exception to master's ruling denying defendant's application to require the production of certain books, &c	85	42
Order fixing compensation of master, &c	87	43
Order extending time to hear final argument	89	44
Motion of master to fix compensation, &c	91	44
Special master's report	93	45
Motion to fix compensation of master	120	62
Order fixing compensation of master, &c	122	63
Order extending time to file exceptions to master's report	124	63
Exceptions of complainant to master's report	126	64
Order extending time to file exceptions to master's report, &c	142	74
Defendant's exceptions to master's report	144	75
Order continuing hearing on exceptions	174	95
Order continuing hearing on exceptions	176	95
Order taking exceptions under advisement	178	96
Order granting leave to file petition for rehearing	180	96
Suggestion of damages by defendant	182	97
Order sustaining exceptions of defendant and referring suggestion of damages to master	185	98
Objections of complainant to taking testimony on question of damages	187	98
Motion for rule to file bill of particulars	190	99
Motion to master to report no damages	193	100
Master's report on suggestion of damages	195	101
Testimony taken before F. C. Howe, master	199	103
Index	199	103
Exhibit A—Rule 38	201	104
Testimony of Ezra F. Parker	202	104
E. H. Tichenor	204	106
Exhibit B—Checks and expense bill	208	109
Testimony of Walter H. Kirk	213	113
I. C. Pinkney	220	118
Thomas N. Gorman	223	120
Henry Mansfield	226	122
Charles S. Proctor	231	125
Edward N. Woodruff	233	127
Charles P. Watson	235	128
Walter H. Kirk	237	130
William Jack	238	130
Objections to testimony on question of damages	242	133
Motion to report no damages	244	134

	Original.	Print
Motion to require bill of particulars	245	134
Certified copy of order of reference	247	135
Petition for rehearing by complainant	250	136
Points in support of petition for rehearing	251	137
Exhibit A—Opinion of Judge Humphrey	256	139
Order denying rehearing	260	141
Decree	262	141
Opinion	266	143
Petition of appeal	270	145
Assignment of errors	272	146
Bond on appeal	282	150
Order allowing appeal	285	152
Clerk's certificate	286	152
Citation	287	153
Marshal's return	287½	153
Stipulation as to Exhibit 11	288	154
Evidence before Israel C. Pinkney, special master	*a*	155
Index to volume 1	1	155
Testimony of Francis W. Little	2	156
Exhibit 10—Schedule of personal property	196½	290
Testimony of Edward G. Cowdery	253	327
Exhibit 2—Statement of cost of gas plant and property of Peoria Gas and Electric Co., September 1, 1900	283*a*	349
3—Operating statement for months, May 1 to August 31, 1900	283*b*	350
4—Results of operations of Peoria Gas and Electric Co. four months, from May 1 to August 31, 1900	283*c*	351
5—Results of operations of Peoria Gas and Electric Co. one year, September 1, 1900, to August 31, 1901	283*d*	352
6—Operating statement, year ending August 31, 1901	283*e*	353
7—Gas statistics in all cities of 50,000 population and upwards in the United States	283*f*	354
8—People's Gas and Electric Co. book of instructions	283*k*	358
9—Stipulation as to testimony	283*x*	366
Index to volume 2	283*d*	367
Testimony of Gideon H. Diall	284	368
John H. Eustis	291	374
Edward G. Pratt	330	399
Harvey W. Brown	385	434
David Douglas	454	483
L. N. Case	490	506
A. P. Lathrop	495	509
K. N. Mitchell	509	518
Leonard Kellogg	526	530
Isaac N. Knapp	547	544
Exhibit 12—Second annual report of water and light department, Duluth, Minn., 1900	580*a*	567
Index to volume 3	581	585
Testimony of Henry L. Doherty	581	586
Donald McDonald	626	614
Edward E. Gore	669	641

	Original.	Print
Testimony of John M. Robb	677	646
Francis W. Little (recalled)	700	661
Francis W. Little (recalled)	740	702
Exhibit 14—Ordinance granting to Chas. V. Newman right to lay mains, &c., May 7, 1901	798*a*	744
15—Veto by mayor and ordinance of June 18, 1901	798*l*	751
16—Ordinance of April 18, 1899	798*q*	754
17—Ordinance of September 4, 1900	798*dd*	763
13—Map of the city of Peoria and vicinity	798*gg*	764
Subpœnas	798*ii*	765
Index to volume 4	799	767
Testimony of Frank T. Corning	801	768
Exhibit 19—Petition to mayor and city council of Peoria, April 18, 1899	819	781
Testimony of Henry Sandmeyer	830	790
Robert D. Clarke	852	805
Theodore J. Miller	873	820
George H. Littlewood	963	888
Benjamin Warren, Jr	1001	919
Oliver J. Bailey	1031	942
Philo B. Miles	1049	957
Lewis A. McFadden	1083	986
David E. Powell	1092	993
Sumner R. Clarke	1100	998
John Thode	1157	1042
W. H. Carroll	1167	1049
Stephen Wolschlag	1177	1057
Robert Kellerstrass	1188	1065
James D. Peck	1197	1071
Exhibit 18—Certificate of secretary of state to People's Gas and Electric Co	1204*a*	1076
Index to volume 5	1205	1081
Testimony of Charles V. Oden	1206	1082
Ferd Luthy	1221	1093
Jacob Hecht	1253	1116
Thomas N. Gorman	1258	1120
Thomas Buckley	1279	1136
E. W. Enstis	1321	1163
George W. Barker	1354	1187
John M. Robb	1369	1198
Theodore J. Miller	1384	1208
Sumner R. Clarke (recalled)	1386	1210
Mathew Henebery	1398	1218
Leslie Robinson	1421	[illegible]
Mathew Henebery (recalled)	1452	[illegible]
Leslie Robison (recalled)	1455	[illegible]
Ferd Luthy (recalled)	1456	1260
Sumner R. Clarke (resumed)	1457	1261
George M. Littlewood (recalled)	1474	1273
Exhibit 23—Stock trust certificate (Littlewood)	1476	1274
24—Stock trust certificate (Littlewood)	1478	1275

	Original.	Print
Testimony of Sumner R. Clarke (resumed)	1481	1277
Theolore J. Miller (recalled)	1495	1288
Phile B. Miles	1498	1290
Exhibit 25—Stock trust certificate (Miles)	1510	1298
26—Stock trust certificate (Miles)	1512	1299
Testimony of Oliver J. Bailey (recalled)	1516	1302
Exhibit 27—Stock trust certificate (Bailey)	1524	1307
28—Stock trust certificate (Bailey)	1526	1308
Testimony of Robert D. Clarke (recalled)	1529	1309
Ferd Luthy (recalled)	1539	1318
Exhibit 29—Stock trust certificate (Luthy)	1544	1320
Testimony of Ben Warren, Jr	1547	1322
Exhibit 30—Stock trust certificate (Warren)	1552	1325
31—Stock trust certificate (Warren)	1554	1326
Testimony of Francis W. Little (recalled)	1557	1328
Exhibit 20—Statement	1632a	1378
Index to volume 6	1633	1391
Testimony of Francis W. Little (recalled)	1634	1392
Henry W. Bicknell	1680	1422
Motion to produce books	1709	1442
Affidavit of Henry Mansfield	1709	1442
Subpœna and return	1711	1443
Ruling on motion	1713	1444
Testimony of Henry W. Bicknell (recalled)	1714	1445
Motion to certify question to court	1717	1447
Order of court on motion	1718	1447
Testimony of George W. Barker	1719	1447
Francis W. Little (recalled)	1733	1457
Exhibit 33—Montaly bills, December, 1901, to June, 1902, inclusive	1737a	1460
32—Agreement between the Peoria Gas Light and Coke Co. and the Peoria Gas and Electric Co., October 21, 1901	1737b	1466
Testimony of Frederick Egner	1738	1469
Exhibit 36—Proceedings of city council, April 18, 1899	1851a	1545
Testimony of Bartholomew M. Lawler	1852	1546
Andrew Palmer	1853	1547
Adam Kohl	1854	1548
Thomas N. Gorman (recalled)	1855	1549
John N. Wall	1857	1551
Henry W. Bicknell (recalled)	1859	1552
Morris G. Planck	1862	1554
Milo Prochazka	1865	1557
Thomas N. Gorman (recalled)	1867	1558
Lyman A. Walton	1870	1561
John R. Walsh	1877	1565
Thomas Littlehales	1878	1566
Meeting of board of directors, May 8, 1899	1936	1605
Board of directors, January 2, 1900	1940	1608
Stockholders, March 13, 1900	1941	1608
Stockholders, June 14, 1900	1943	1609

	Original.	Print
Meeting of Board of directors, December 26, 1900	1951	1614
Stockholders, January 29, 1901	1952	1615
Board of directors, October 8, 1901	1955	1617
Testimony of John Madigan	1960	1618
Frank O. Cunningham	1961	1620
Joseph P. Durkin	1963	1621
Bernard Cremer	1964	1622
Morris G. Planck	1967	1624
Francis W. Little (recalled)	1970	1626
Exhibit 37—Letter, Peoria Gas Light and Coke Co. to Peoria Gas and Electric Co., October 2, 1901	1971	1627
38—Notice from Peoria Gas Light and Coke Co. to Peoria Gas and Electric Co., February 15, 1902	1972	1628
39—Monthly bills, November 30, 1901, to July 31, 1902	1974	1630
34—Certificate of city clerk	1983*a*	1639
35—Petition of People's Gas and Electric Co	1983*b*	1640
36—Proceedings of city council, April 18, 1899	1983*c*	1641
22—Certificate of S. R. Clarke *et al.*, January 29, 1901	1983*e*	1642
Affidavit of Henry Mansfield	1983*g*	1643
Subpœna and return	1983*i*	1644
Index to volume 7	1983*l*	1646
Testimony of Wm. T. Abbott	1983*m*	1647
Exhibits 40, 41, and 42—Proceedings of board of directors of Peoria Gas Light and Coke Co.	1987	1649
Testimony of Donald McDonald (recalled)	2015	1668
Francis W. Little (recalled)	2036	1682
Exhibit 43—Operating statement for year, September, 1901, to August, 1902	2061	1698
44—Manufacturing and distribution statement for year, September 1, 1901, to August 31, 1902, inclusive	2063	1701
Testimony of F. W. Little (resumed)	2065	1703
Exhibit 45—Bills, September 1, 1902	2079	1712
Testimony of J. M. Robb (recalled)	2084	1715
Exhibit 46—Statement of prices charged to consumers from 1897 to 1902, inclusive	2086½	1717
Testimony of F. W. Little (resumed)	2087	1717
Exhibit 47—Operating statement for September, 1902	2094	1723
48—Cost of plant and property as at September 30, 1902	2095	1724
Testimony of F. W. Little (resumed)	2121	1743
Complainant rests in rebuttal	2152	1762
Testimony of Mathew Henebery	2152	1762
Leslie Robison (recalled)	2164	1771
Exhibit 47—Operating statement, month of September, 1902	2173	1777
48—Cost of gas plant and property as at September 30, 1902	2174	1779
Master's certificate	2175	1780

1-3 PEORIA GAS AND ELECTRIC COMPANY
vs.
CITY OF PEORIA. } No. 288. Chancery.

Record.

4 Pleas in the circuit court of the United States for the northern district of Illinois, southern division, at a regular term of said court begun and held at the United States court rooms in the city of Peoria, in said district, on the third Monday of October, being the nineteenth day of said month, in the year of our Lord one thousand nine hundred and three, and of the Independence of the United States the one hundred and twenty-eight- year.

The Honorable William R. Day, presiding justice being absent,
The Honorable Peter S. Grosscup, circuit judge being absent,
The Honorable Christian C. Kohlsaat, district judge being absent
The Honorable J. Otis Humphrey, district judge being present by assignment in writing as follows:

Circuit Court of the United States, Northern District of Illinois, Northern Division.

By virtue of the authority vested in me by law, and because in my judgment the public interest so requires, I do hereby designate and appoint the Hon. J. Otis Humphrey, judge of the district court of the United States for the southern district of Illinois, to aid the judges of the circuit and district courts of the United States for the northern district of Illinois, at Chicago and Peoria, in said district, in holding the circuit and district courts of the United States for the northern district of Illinois at Chicago and Peoria aforesaid, with all the powers conferred upon him by the acts of Congress in the premises.

P. S. GROSSCUP,
Circuit Judge, Seventh Circuit.

Hon. S. H. Bethea, U. S. attorney, being present
Hon. John C. Ames, U. S. marshal, being present by S. O. Tripp, his deputy
Hon. Marshall E. Sampsell, clerk, being present by F. C. Howe, his deputy.

5 Be it remembered that heretofore to-wit on the eighteenth day of September A. D. 1900 there was filed in the office of clerk of said court a certain bond for costs, which said bond is in words and figures following to-wit:

6 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division, }

Circuit Court, May Term, A. D. 1900.

PEORIA GAS AND ELECTRIC COMPANY }
vs. } In Chancery.
CITY OF PEORIA. }

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the complainant of any costs ordered or adjudged to be paid by complaint- hereby agree and stipulate that execution may issue against my property for all costs not exceeding two hundred dollars taxed against complaint-.

Dated this 18th day of September A. D. 1900.

JOHN R. WALSH,
Residence 2133 *Calumet Ave., Chicago.*

Acknowledged before — this — day of —— 1900.

——— ———,
Clerk U. S. Circuit Court, Nor. Dist. Ill.

I, John R. Walsh a surety on the annexed bond, being duly sworn, depose and say that I am worth in real estate, situate in the northern district of Illinois, the sum of -our hundred dollars over and above my just debts and liabilities.

JOHN R. WALSH.

Sworn to and subscribed before me, this — day of —— 1900.

——— ———, *Clerk.*

Endorsement: "Filed Sept. 18 1900. S. W. Burnham, clerk."

7 And afterwards, on the same day, to-wit, the eighteenth day of September, A. D. 1900, there issued out of the office of the clerk of said court in said cause a chancery subpœna, which said subpœna is in words and figures following, to-wit:—

8 Form No. 186.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division, }

The United States of America to City of Peoria, State of Illinois, Greeting:

We command you and every of you, that you appear before our judges of our circuit court of the United States of America for the

northern district of Illinois, at Peoria, in the northern division of said district, on the first Monday in the month of November next, to answer the bill of complaint of Peoria Gas and Electric Company, this day filed in the clerk's office of said court, in said city of Peoria, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Peoria aforesaid, this eighteenth day of September, in the year of our Lord one thousand nine hundred and of our Independence the 125th year.

[COURT SEAL.] S. W. BURNHAM, *Clerk.*

Memorandum.

The above named defendant is notified that unless it shall enter its appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against it as confessed, and a decree entered accordingly.

S. W. BURNHAM, *Clerk.*

9 Which said subpœna was afterwards, to-wit, on the twenty-six day of September, A. D. 1900 returned into the office of the clerk of said court returned by the marshall endorsed in words and figures as following, to-wit:—

I have served the within writ within my district in the following manner to-wit:—

Upon the city of Peoria, State of Illinois, by personally delivering a true copy of the same to Henry W. Lynch, mayor of the city of Peoria, State of Illinois, at Peoria, Illinois, this 19th day of September A. D. 1900.

JOHN C. AMES,
U. S. Marshall,
By S. O. TRIPP, *Deputy.*

Fees.

1 service	2.00
1 mile	.06
	2.06

Endorsement #288 Original #77 Marshal's No. 1461. Term No. — General No. 288 so. div. Circuit court United States northern district of Illinois, northern division. Peoria Gas and Electric Company *vs.* City of Peoria. Chancery subpœna. Returnable to rule day, first Monday in November A. D. 1900 S. W. Burnham, clerk. W. T. Irwin and Hatch & Ritcher complainant's solicitor. Filed Sept. 26th 1900 S. W. Burnham, clerk.

10 And afterwards on the same day to-wit the eighteenth day of September 1900, there was filed in the office of the clerk of said court a bill of complaint which said bill is in words and figures following, to-wit:—

11 In the United States Circuit Court, Northern District of Illinois, Southern Division

To the Honorable Peter S. Grosscup, judge of the United States circuit court for the northern district of Illinois, southern division, in chancery sitting:

Your orator, The Peoria Gas and Electric Company, respectfully represents unto your honor, that it is a corporation organized under the general incorporation laws of the State of Illinois, on the 21st day of March, A. D. 1899, with its principal office and place of business in the city of Peoria, in the county of Peoria, in said State of Illinois, and is an inhabitant of the district aforesaid; that in and by its said charter, it is authorized and empowered to construct and erect gas plants and works for the manufacture of gas; to construct, lay and maintain gas mains, pipes and conduits for the distribution of gas and to sell and deliver the same to consumers for light, heat and power purposes; and also other powers specifically set forth and named in said articles of incorporation.

That it was originally incorporated on the date aforesaid under the name and style of the "People's Gas & Electric Company," but afterwards on the 13th day of February, 1900, at a special meeting of the stockholders of said company called for that purpose as provided by the laws of the State of Illinois, the name of said corporation was changed to the "Peoria Gas and Electric Company" and has since, and is now conducting and carrying on its business

12 under said last name.

Your orator further represents that the city of Peoria, a municipal corporation of the said county of Peoria and the State of Illinois, and an inhabitant of the district aforesaid, by its city council on the 18th day of April, A. D. 1899, in pursuance *to* a petition from your orator and a majority of the owners of the property fronting upon certain streets, avenues, alleys and highways in said city duly passed and adopted a certain ordinance granting to your orator, its successors and assigns the right to construct, erect and maintain and operate gas works, together with the right to lay and maintain mains and pipes in and through the several streets, avenues, alleys and public places in said city and sell and deliver gas to the said city of Peoria and the inhabitants thereof, for light, heat and power purposes; which said ordinance is as follows:

"*An Ordinance.*

An ordinance granting the People's Gas and Electric Company the right to lay gas mains and pipes and distribute gas in and along the several streets and highways in the city of Peoria, Illinois.

Be it ordained by the city council of the city of Peoria:

SECTION 1. Subject to the terms and conditions of this ordinance, there is hereby granted to the People's Gas and Electric Company, a corporation created and existing under and by virtue of the laws of the State of Illinois its successors and assigns, the right to construct, repair, maintain and operate gas works in the city of Peoria, together with the right of way along, upon and under all the avenues, street-, alleys, highways and public places in said city, for the purpose of placing, operating, repairing and maintaining one or more lines of gas mains and pipes and all necessary feeders, service pipes, branches, cutoffs and manholes in connection therewith, for the distribution of natural or manufactured gas for light, fuel,
13 heat and power purposes.

SECTION 2. That in pursuance *to* the petition of the owners of the land representing more than one-half of the frontage on the streets, avenues and public highways hereinafter named, the right and authority is hereby granted to said People's Gas and Electric Company, its successors and assigns to construct, lay and maintain gas mains, pipes, branches, feeders, service pipes, cut-offs and manholes, in under and along the following named streets, avenues, and highways in the said city of Peoria, Illinois, for the purpose of furnishing the said city and the inhabitants thereof with gas for light, fuel, heat, and power, viz:

Persimmon street, from Grove street, the initial point, to Spencer street.

Spencer street, from Persimmon street, the initial point, to Elizabeth street.

Elizabeth street, from Spencer street, the initial point, to city limits.

Saint James street, from Elizabeth street, the initial point, to University street.

University street, from Saint James street, the initial point, to Moss avenue.

The alley dividing the blocks and lying between Adams street and Warner avenue, from Persimmon street, the initial point, to Monson street.

Prairie street (or alley) from Monson street, the initial point, to Adams street.

Adams street, from Prairie street (or alley) the initial point to Franklin street.

Franklin street, from Adams street, the initial point, to Seventh avenue.

Perry avenue, from Franklin street, the initial point, to Main street.

Main street, from Water street, the initial point, to University street.

The alley dividing the blocks and lying between Adams street and South Jefferson avenue from Franklin street, the initial
14 point, to Fulton street.

The alley dividing block ten (10) in the original town of Peoria and lying between Main street and Fulton street, from Adams street, the initial point, to Jefferson avenue.

The private alley running through lot seven (7) in block ten (10) original town of Peoria, from Fulton street, the initial point, to the main alley in said block.

Knoxville avenue, from Main street, the initial point, to Nebraska street (city limits).

The alley dividing the blocks and lying between Fredonia avenue and Barker avenue, from University street (formerly Bradley street) the initial point, to Western avenue.

The alley dividing the blocks and lying between Fifth avenue and Sixth avenue from Spencer street, the initial point, to Franklin street.

The alley dividing the blocks and lying between First avenue and Second avenue from Spencer street, the intial point, to Franklin street.

East Armstrong avenue (formerly Taylor street) from Knoxville avenue the initial point, to Glen Oak avenue, (formerly Bluff street).

Wayne street, from the alley lying between Perry avenue and Glendale avenue on said Wayne street, the initial point, to Glen Oak avenue (formerly Bluff street).

The alley dividing the blocks and lying between Madison avenue and Jefferson avenue from Franklin street, the intial point to Abington street.

The alley dividing the blocks and lying between Perry avenue and Glendale avenue from Main street, the initial point, to Mary street.

Adams street, from Persimmons street, the initial point, to Western avenue.

The alley dividing the blocks and lying between Third avenue and Fourth avenue, from Spencer street, the initial point to Franklin street.

15 The alley dividing the blocks and lying between Second avenue and Third avenue from Spencer street, the initial point to Franklin street.

The alley dividing the blocks 15, 16 and 18 in Callender & Ayer's addition; said alley lying in the rear of said blocks from Malvern street, the initial point, to Western avenue.

The alleys in block nine (9) Callender & Ayer's addition, also the alley in Moss avenue addition from Malvern street, the initial point, to Barker avenue.

The alley dividing blocks and lying between Adams street and Washington street, from Bridge street, the initial point, to Eaton street.

The alley dividing the blocks and lying between Monroe street and Madison avenue from Franklin street, the initial point to Abington street.

The alley dividing the blocks and lying between Fourth avenue and Fifth avenue from Spencer street, the initial point, to Fisher street.

The alley dividing the blocks and lying betwe-n Fourth avenue and Fifth avenue from Franklin street, the initial point, to Sanford street.

Chambers avenue, from Knoxville avenue, the initial point to Elizabeth street.

Bridge street from Adams street, the initial point, to water street.

The alley dividing block twelve (12) in Pulsipher's second division from Chambers avenue, the initial point, to Hamilton street.

The alley dividing block thirteen (13) in Pulsipher's second division from Chambers avenue, the initial point, to Hamilton street.

Harrison street, from Franklin street, the initial point, to Water street.

Adams street, from Eaton street, the initial point, to the alley lying between Hancock and Eaton street.

16 The alleys lying within the block bounded by Eaton street, North Jefferson avenue, Hancock street and Adams street, running from Adams street to Hancock street from Adams street. the initial point, to Hancock street.

Malvern street, from the alley lying between Barker avenue and Fredonia avenue, the initial point, to Bradley avenue.

The alley dividing the blocks and lying between Sixth avenue and Seventh avenue from Spencer street, the initial point, to Franklin street.

First avenue from Spencer street, the initial point, to Seventh avenue.

Second avenue, from Spencer street, the initial point, to Seventh avenue.

Third avenue, from Spencer street, the initial point, to Sand street (near Seventh avenue).

Fifth avenue, from Spencer street, the initial point, to Saratoga street.

Sixth avenue from Spencer street, the initial point, to western limits of Sixth avenue.

Hurlburt street from Spencer street, the initial point, to Steubenville street.

Hurlburt street, from Spencer street, the initial point, to eastern limits of said Hurlburt street at Reed avenue.

Smith street, from Spencer street, the initial point, to Steubenville street.

Johnson street, from Spencer street, the initial point, to Steubenville street.

McBean street, from Spencer street, the initial point, to Steubenville street.

Ellis street, from Main street, the initial point, to Chambers avenue.

Flora avenue, from Main street, the initial point, to Chambers avenue.

17 Malvern street, from the alley between Fredonia avenue and Barker avenue, the initial point, to the line of alley in rear of Moss avenue.

Washington street from Chestnut street, the initial point, to Lisk street.

May street, Forsyth street and alleys all dividing the blocks and lying between Adams and Washington streets from Bridge street, the initial point, to the southwesterly terminus of said May street or alley.

The alley dividing blocks and lying between Adams street and Washington street, from northeasterly end of Forsyth street, the initial point, to Bridge street.

Forsyth street or alley dividing blocks and lying between Adams street and Washington street from Persimmons street, the initial point, to its northeasterly terminus.

Alley dividing blocks and lying between Ayers avenue and Sherman avenue, from the center of the main alley in block 16 in Callender & Ayer's addition to Western avenue.

Alley dividing the blocks and lying between Perry avenue and Monroe street from Franklin street, the initial point, to Cornhill street.

Alley dividing blocks and lying between Washington street and Water street, from Chestnut street, the initial point, to Eaton street.

Alley dividing block 11 in Pulsipher's second division, from North street, the initial point, to Randolph avenue.

North street, from Main street, the initial point, to Michigan avenue (city limits).

Eaton street, from alley in block 22 (original town) of Peoria, the initial point, to Adams street.

Alley dividing the blocks and lying between Adams street and North Jefferson avenue, from Hancock street, the initial point, to Grant street.

18 North Frink street, from Main street, the initial point, to Russell street.

South Garfield avenue, from Main street, the initial point, to Moss avenue.

North Garfield avenue, from Main street, the initial point, to Chambers avenue.

Abington street, from Adams street, the initial point, to Perry avenue.

Jefferson avenue, from Abington street, the initial point, to Galena road (city limits).

Glen Oak avenue (formerly Bluff street) from Main street, the initial point, to Spring street.

Indiana avenue (formerly Weber street) from Glen Oak avenue, the initial point, to Behrens avenue.

Wisconsin avenue (formerly Buckner avenue) from Glen Oak avenue, the initial point, to Nebraska avenue.

South Orange street from Main street, the initial point, south to alley in block 6 Moss addition.

North Orange street, from Main street, the initial point, to Chambers avenue.

South Douglas street, from Main street, the initial point, to Moss avenue.

North Douglas street, from Main street, the initial point, to Chambers avenue.

Fayette street, from Knoxville avenue, the initial point, to alley between Glendale avenue and Perry avenue.

Chestnut street, from alley between Warner avenue and Adams street, the initial point, to the alley between Washington street, and Water street.

19 Brotherson street, from Spencer street, the initial point, to Steubenville street.

Saratoga street, from Brotherson street, the initial point, to Bradley avenue.

Steubenville street, from Ketelle street, the initial point, to Prairie street.

Warner avenue, from Persimmon street, the initial point, to Lincoln avenue.

Burler street, from Brotherson street, the initial point, to Western avenue.

Widenham street, from Steubenville street, the initial point, to Warren street.

Ketelle street, from Steubenville street, the initial point, to Warren street.

Martin street, from Steubenville street, the initial point, to Allen street.

Sixth street, from Steubenville street, the initial point, to Western avenue.

Howett street, from Brotherson street, the initial point, to Warren street.

Bradley avenue, from Saratoga street, the initial point, to University street.

Underhill street, from Bradley avenue, the initial point, to Russell street.

South Bourland street, from Main street, the initial point, to Bradley avenue.

North Bourland street, from Main street, the initial point, to Russell street.

South Frink street, from Main street, the initial point, to Bradley avenue.

20 Jackson street, from Glen Oak avenue, the initial point, to alley between Glendale avenue and Perry avenue.

Bluff street, from Main street, the initial point, to Sanford street.

Monson street, from Bluff street, the initial point, to Seventh avenue.

Adams street, from Hamilton street, the initial point, to the line of the alley dividing block 9, in original town of Peoria.

Hamilton street, from the alley lying between Adams street and Washington street, the initial point, to Adams street.

Alley dividing block and lying between Hamilton street and Fayette street from Adams street, the initial point, to Jefferson street.

Nebraska avenue, from Knoxville avenue, the initial point, to California avenue.

Eaton street, from the alley lying between Washington and Water streets, thence north along said Eaton street, the initial point, to the line of the alley between Adams street and Washington street.

Pennsylvania avenue from Knoxville avenue, the initial point to Indiana avenue.

Cass street, from Adams street, the initial point, to Water street.

Washington street, from Cass street, the initial point to Lisk street.

Garden street, from Adams street, the initial point, to Western avenue.

Western avenue, from Adams street, the initial point, to alley lying between and dividing block between Fredonia avenue and Barker avenue.

Alley dividing blocks and lying between Callender avenue and Ayers avenue from center of the Main alley in block 15, Calender & Ayer's addition, the initial point, to Western avenue.

21 Alley dividing blocks and lying between Barker avenue and Callender avenue, from Malvern street, the initial point, to Western avenue.

Millman street, from Bortherson street, the initial point, to Linden street.

Alleys in block 3, Buckner addition from Indiana avenue, the initial point, to north limits of said block 3.

Chambers avenue, from Elizabeth street, the initial point, to north Garfield avenue.

Alleys in block 2, Buckner's addition, between California avenue and New York avenue, from Nebraska avenue, the initial point, to south limits of alley.

Alley in block 1, Pierce place between Missouri avenue and California avenue, the initial point, to Ravine avenue.

Alley between Dechman avenue and Peoria avenue, from Nebraska avenue, the initial point, to south limits of said alley. Al-

leys in block "A" McClure's addition between New York and California avenue, alleys dividing blocks and lying between Illinois avenue and Pennsylvania from Knoxville avenue, the initial point, to Peoria avenue.

Alley dividing blocks 4, 5 and 6 in Smith Frye's addition, from Knoxville avenue, the initial point, to Missouri avenue.

Alley in blocks 1 and 2 Smith Frye's addition between Indiana avenue and California avenue.

Alleys in block "B" McClure's addition between Indiana avenue and New York avenue.

Seventh avenue from Saratoga street, the initial point to Western avenue.

Greenleaf street from Jackson street, the initial point, to Wayne street.

Also the right and authority to connect the same with mains, pipes, feeders and service pipes that may be laid or maintained
22 in and along any other streets, avenues or public highways in said city for the purposes aforesaid.

SECTION 3. The grantee herein shall enter into a bond in the penal sum of one thousand dollars ($1000.00), with sufficient surety (which surety may be a corporation organized to do a surety business) the same to be approved by the mayor and comptroller, conditioned to keep the city harmless from all damages of every kind and nature occasioned by the said grantee and to indemnify all persons or corporations damaged or injured by reason of the negligent acts of said grantee in and about the exercise of the rights and privileges herein granted.

SECTION 4. This ordinance is granted upon the condition that said company shall, within six (6) months from the date of the acceptance of this ordinance, begin the construction of gas works within the city of Peoria, and shall, within eighteen (18) months from the date of the acceptance of this ordinance, begin to manufacture and supply gas hereunder; provided, however, that the time during which any legal proceedings shall be pending, whereby the said company, its successors or assigns, shall be prevented from or delayed in complying with the requirements of this section, shall not be taken or deemed any part ot the time specified.

Said company shall, within thirty (30) days from and after the passage of this ordinance, deposit with the city treasurer of the city of Peoria, the sum of five thousand dollars ($5000.00) as security for its faithful compliance with the provisions of this section of this ordinance, which sum so deposited shall be returned to said company when it shall have expended the sum of fifty thousand dollars ($50,000.00) in and about the purchase, construction and erec-
23 tion of its said gas works. Should said company fail to commence the erection of said gas works, or fail to supply gas within the time mentioned herein, then the city council may, by *by* resolution, declare the said sum of five thousand dollars ($5,000.00) forfeited to the said city of Peoria.

SECTION 5. Said company shall, when so ordered by a majority vote of all the aldermen elected, extend their mains on any street, avenue or other public highway contiguous to the mains of said company at that time in use and operation provided, however, that said company shall not be required so to extend its mains until said company shall receive a good and sufficient guarantee that the amount of annual revenue to be derived by said company from such extension shall not be less than the sum of one hundred dollars ($100.00) per five hundred (500) feet of main extension so ordered.

SECTION 6. Said company shall do no permanent injury to any street, sidewalk, alley or public place, and when said company shall open ground in any street, it shall forthwith restore the street pavement and sidewalk to a condition equally as good as before, at the expense of said company. Where the streets and avenues in said city of Peoria have been permanently paved prior to the laying or placing of any gas mains therein by the said People's Gas and Electric Company, its successors or assigns, said People's Gas and Electric Company, its successors or assigns shall, when, in its judgment the same shall be practicable, lay all such gas mains in and through the alleys, thereby so far as practicable avoiding the necessity of disturbing said permanent pavements; and when in the judgment of said company, its successors or assigns, it shall be deemed necessary to make any extension in any street, avenue or public place, which shall be permanently improved either by paving or macademizing, the said company shall first secure a permit for that purpose from the commissioner of public works of this city.

24 Whenever any street is about to be permanently improved by paving or macademizing the commissioner of public works shall notify said company of such proposed improvement, and within sixty (60) days after such notification, said company shall lay its mains, including all service pipes and connections to the curb line at its own cost and expense.

SECTION 7. The rights and privileges hereby granted by this ordinance are granted for the term of ninety-nine (99) years from and after the acceptance of this ordinance.

SECTION 8. This ordinance shall take effect and be in force from and after its passage and the acceptance thereof by said company and the filing and approval of the bond herein required.

Passed in council this 18th day of April, A. D. 1899.

JOHN WARNER, *Mayor.*

ROBERT M. ORR, *City Clerk.*

Your orator further shows unto your honor that said ordinance was duly approved by the mayor of said city, and thereafter duly accepted by your orator, in writing, filed with the city clerk of said city on the 20th day of April, A. D. 1899, according to the terms thereof; which said agreement of acceptance is as follows:

Agreement of Acceptance.

This agreement witnesseth: That whereas, the city council of the city of Peoria, Illinois, on the 18th day of April, A. D. 1899, duly adopted an ordinance entitled, "An ordinance granting the People's Gas and Electric Company the right to lay gas mains and pipes, and distribute gas in and along the several streets and highways in the city of Peoria, Illinois;" and

25 Whereas, it is provided in and by section 8 of said ordinance that the same shall take effect and be in force from and after its passage and the acceptance thereof by the said People's Gas and Electric Company" and the filing and approval of the bond as in said ordinance required: Now therefore

In consideration of the premises and in further consideration of the rights and privileges in and by said ordinance granted to said People's Gas and Electric Company, and in further consideration of the mutual benefits to accrue to the said city of Peoria and the said People's Gas and Electric Company by virtue of the rights and privileges in said ordinance granted, the said People's Gas and Electric Company hereby accepts said ordinance, subject to all the terms and conditions thereof as therein set forth, and agrees to carry out and perform all the stipulations and requirements on its part to be kept and performed, as in said ordinance designated.

In witness whereof, the said People's Gas and Electric Company has caused this agreement to be executed in its corporate name by its president and countersigned and sealed by its secretary, all done at the city of Peoria, Illinois, this 20th day of April, A. D. 1899.

[SEAL.] PEOPLE'S GAS AND ELECTRIC COMPANY,
By S. R. CLARK, *Its President.*"

Attest: THEO. J. MILLER, *Secretary.*

Your orator further represents, that also on the said 20th day of April, A. D. 1899, it filed its bond with the said city of Peoria in the penal sum of one thousand dollars ($1000.00), conditioned as in said ordinance required, with good and sufficient securities thereon, which was thereupon duly approved by the mayor and comptroller of said city as required by said ordinance, which said bond is as follows:

26 Know all men by these presents, that the People's Gas and Electric Company, a corporation, as principals, and Robert D. Clark and George H. Littlewood as sureties, are held and firmly bound unto the city of Peoria, a municipal corporation, of the county of Peoria and State of Illinois, in the penal sum of one thousand dollars ($1000.00) lawful money of the United States of America, to be paid to the said city of Peoria, which payment well and truly to

be made, we bind ourselves, our heirs, executors, and assigns, firmly by these presents.

In witness whereof, the said People's Gas and Electric Company has caused this bond to be executed in its corporate name by its president and countersigned and sealed by its secretary, and the said Robert D. Clark and George H. Littlewood have hereunto set their hands and seals this 20th day of April, A. D. 1899.

The condition of the above obligation is such, that

Whereas, the city council of the city of Peoria, Illinois, did, on the 18th day of April, A. D. 1899, duly pass and adopt a certain ordinance entitled, "An ordinance granting the People's Gas and Electric Company the right to lay gas mains and pipes, and distribute gas in and along the several streets highways in the city of Peoria, Illinois," and

Whereas, it is provided in and by section three (3) of said ordinance, that said People's Gas and Electric Company shall enter into a bond in the penal sum of one thousand dollars ($1000.00) with sufficient surety (which surety may be a corporation organized to do a surety business) the same to be approved by the mayor and the comptroller, conditioned to keep the city harmless from all damages of every kind and nature, occasioned by the said People's Gas and Electric Company, and to indemnify all persons, or corporations damaged or injured by reason of the negligent acts of said company in and about the exercise of the rights and privileges in said ordinance granted.

Now, if the said People's Gas and Electric Company shall
27 keep the said city of Peoria harmless from all damages of every kind and nature occasioned by the said People's Gas and Electric Company, and indemnify all persons or corporations damaged or injured by reason of the negligenct acts of the said People's Gas and Electric Company in and about the exercise of the rights and privileges in said ordinance granted; then this obligation shall be void. Otherwise to remain in full force and virtue.

PEOPLE'S GAS AND ELECTRIC COMPANY,
By S. R. CLARK, *Its President.*

[SEAL.] ROBERT D. CLARK. [SEAL.]
GEO. H. LITTLEWOOD. [SEAL.]

50 cts. U. S. revenue stamps.

Attest: THEO. J. MILLER, *Secretary.*

Approved:
M. D. MEISSER,
Comptroller.

Approved:
JOHN WARNER, *Mayor.* [SEAL.]

Orator further shows that within the thirty (30) days mentioned in section 4 of said ordinance, it deposited with the city treasurer of said city, the sum of five thousand ($5000.00) dollars as security for its faithful compliance with the provision of said section of said ordinance. And that said sum of five thousand ($5000.00) dollars was afterwards returned by said city to your orator, upon its full compliance therewith as therein provided.

Your orator further shows unto your honor, that upon the passage and approval of said ordinance by said city; the filing of the acceptance thereof, together with the bond and money deposit so made by your orator, as aforesaid, the same became and is a binding contract between said city of Peoria and your orator upon the terms and conditions therein set forth.

That at all times since the consummation of said ordinance
28 contract, your orator has at all times complied with, carried out and performed all the terms and conditions therein contained to be by it kept and performed. That as soon as practicable, and within six months, after the passage and acceptance of said ordinance, and the consummation of said contract as aforesaid, your orator proceeded to exercise the rights and privileges therein granted. That it purchased factory grounds and erected a large and modern gas manufacturing plant in said city, with gas tanks, holders and other equipments sufficient to manufacture, store and supply gas to meet the requirements of said ordinance contract for some years to come: That it has constructed and laid in along the several streets, avenues, alleys, and public places, a large and complete system of gas mains and pipes connected with its said gas plant, to suitably and conveniently convey and deliver gas to the different parts of said city and the inhabitants thereof: That it has already about twenty-six and one-half (26½) miles of gas mains laid in and along said several streets, avenues, alleys and highways named in said ordinance contract. That said gas plant has been erected, and all of said gas mains have been laid in accordance with the rules and regulations of said city. That, relying upon the validity and good faith of said ordinance contract with said city, it has laid out and expended large amounts of money in the securing of said factory site, construction and erection of said gas plant, and the laying of said gas mains and pipe system through the streets and highways of said city; that the amount already expended and paid in the construction and erectian of said gas plant and pipe system by your orator, in pursuance to said ordinance contract with said city, is about the sum of four hundred and seventy-five thousand ($475,000.00) dollars; that your orator, by the prosecution of its rights and privileges under said ordinance contract, and the judicious expenditure of said large amount of money is now possessed of a large and valuable gas plant in said city of Peoria, in every respect equal to or exceeding such plant as contemplated by any of the parties interested at the time of the granting of said rights named in said ordinance contract, and that it began to manufacture and supply gas

within 18 months from the date of the acceptance of said or-
29 dinance and is now delivering gas to the inhabitants of said city of Peoria, through more than two thousand gas meters placed for the proper measurement of gas for consumption, with a growing business, that without the unwarranted interference hereinafter set out, would eventually award fair returns to those having invested said large amount of money in the establishment and development of said gas plant. That your orator after taking into consideration the large expense of said gas plant, its operation and development, fixed the price of gas to consumers, — one dollar and twenty-five cents per thousand cubic feet for illuminating purposes, with a discount of ten cents (10 cts.) on each one thousand cubic feet of gas furnished on all bills paid on or before the 10th day of the month following that for which gas has been furnished. And to develop and encourage the use of gas for fuel purposes, which is generally used by consumers during the day time, when little gas is used for illuminating purposes, your orator has fixed the price to consumers at the rate of eighty-five cents per one thousand cubic feet for fuel purposes, allowing a discount of ten (10) cents on each one thousand cubit feet of such fuel gas furnished on all bills therefor, paid on or before the 10th day of the month following that for which such gas has been furnished, making an average net price for gas furnished of abont 95 cents per one thousand cubic feet.

That your orator also furnishes and lays, free of charge, to the consumer, all service pipes from its gas mains into the premises and buildings of the consumer, and also furnishes and sets free of charge all gas meters for the proper measurement of gas furnished. That such prices for gas of the character so furnished by your orator is most reasonable and below the ordinary and usual price charged for such gas in cities of the size and character of the said city of Peoria and do not at present, and has not since the commencement of the operation of said gas plant, furnish or yield any fair or reasonable income upon the amount of said investment. But your orator believes, that with judicious and economic management, and with-
out the unwarranted interference hereinafter set forth it
30 would in time, with proper and energetic development of its said business, yield fair and reasonable returns upon the capital so invested, and to be invested in the future and further development of said plant and business, at the prices so fixed by it as aforesaid.

Your orator further represents, that the said city of Peoria, through its city council, in violation of the said contracts rights of your orator, and without right or power so to do, on the 4th day of September, A. D. 1900, passed and adopted the following ordinance, namely:

An Ordinance.

An ordinance regulating and fixing the maximum price of gas in the city of Peoria.

Be it ordained by the city council of the city of Peoria:

SECTION 1. That the maximum price of gas furnished the city of Peoria, and the citizens thereof, and all consumers of gas therein, shall not exceed the sum of seventy-five cents (75 cts.) per thousand cubic feet; such gas so furnished to afford a light of not less than eighteen (18) candle power, to be measured and ascertained at the place of consumption in said city, by the most modern appliances know- to science for measuring the candle power of illuminating gas; and the Peoria Gas Light & Coke Company, and the Peoria Gas & Electric Company, and any other company, corporation, person or persons who are now — may hereafter furnish gas to consumers in the city of Peoria, are hereby authorized and empowered to charge all consumers of gas in said city a sum not in excess of seventy-five (75 cts.) per thousand cubic feet.

SECTION 2. That any company, corporation, person or persons who shall, in violation of the provisions of the preceding section, charge or require the city of Peoria, or any citizen thereof, or any consumer of gas therein to pay for gas furnished to it or them, or either of them, a sum in excess of seventy-five cents (75 cts.) per thou-
31 sand cubic feet, or who shall furnish to said city of Peoria, or any citizen thereof, gas less than eighteen (18) candle power, shall be subject to a penalty of not less than twenty-five ($25.00) dollars, nor more than two hundred ($200.00) dollars for each and every offense.

SECTION 3. That any company, corporation, person or persons, who shall remove any meter or meters from the house, store, factory or premises of any consumer of gas in the city of Peoria, against the will and consent of any such consumer of gas who is willing to pay for gas furnished him, it or them by any company, corporation, person or persons, the price established and fixed in section one (1) of this ordinance shall be subject to a penalty of not less than twenty-five dollars, nor more than two hundred ($200.00) dollars for each and every offense: Provided, however, that any company, corporation, person or persons furnishing gas to consumers in the city of Peoria, shall have the right to remove any meter or meters for the purpose of repairing the same, on condition that such meter or meters so removed shall be replaced or a new one substituted in its place within twenty-four (24) hours of the time of removal of any such meter or meters.

SECTION 4. This ordinance shall be in force and effect from and after its passage and due publication, as provided by law: Provided, that nothing herein contained shall impair the obligation of any

contract in existence between the city of Peoria and either of said gas companies above mentioned.

SECTION 5. All ordinances or parts or ordinances in conflict with this ordinance, are hereby repealed, subject to the proviso contained in section four (4) of this ordinance.

Passed in council this fourth (4) day of September, A. D. 1900.

HENRY W. LYNCH, *Mayor.*

Attest: ROB'T M. ORR, *City Clerk.*

32 That said ordinance was, thereafter, on the 6th day of September, 1900, by said city duly published, so as to give the same the effect of a penal ordinance, and said city, through its mayor and other executive officers threaten to enforce same against your orator and inflict upon it the penalties therein designated, should it refuse to comply with all the terms and requirements thereof.

Your orator represents, that the city council of said city had no power or authority to pass said last named ordinance fixing the price at which your orator or others should charge for gas furnished to consumers. That no such power or authority has ever been delegated to said city by the legislature of the State of Illinois, and that the passage of such ordinance was an assumed power on the part of said city, regardless of any rights vested in it by the sovereign power of the State, and the same is void.

That said ordinance is also invalid as against your orator because the price for which gas could be sold your orator hereby alleges was arbitrarily fixed by the city council of said city in the passage of said ordinance, without any investigation or method or inquiry to ascertain whether seventy-five cents per one thousand (1000) cubic feet of gas furnished was a reasonable rate or charge, or that such rate would enable your orator to maintain its existence, or to make a reasonable profit on the large amount of money invested in its said plant. And your orator states the fact to be, that the rates fixed in such ordinance is an unreasonable low rate, and that its enforcement would bring ruin and destruction to the property and business of your orator, and have for its effect, the confiscation of its said property to an amount far exceeding the sum of two thousand dollars. That it cannot manufacture and deliver gas to consumers of the quality manufactured by it or of the quality required by said ordinance at the prices fixed by said ordinance, that such price is so unreasonably low that your orator would, if compelled to furnish gas according to its requirements, be unable to meet its fixed
33 charges and expenses, and would in time be rendered insolvent.

That said ordinance is also void, for the reason that the penalties therein provided your orator hereby alleges are unreasonable, exorbitant and void as said city had no right, power or authority vested in it by law to prescribe the same for any reason therein stated.

Your orator further represents, that said ordinance is unreasonable and invalid, in that it is impracticable and impossible to be complied with according to its terms: That gas of a uniform 18 candle power, at the place of consumption, cannot be furnished through a pipe system in a city of the size and character of the said city of Peoria, for the reason that gas manufactured and placed in the tank or holder of 18 candle power light, will vary from one to three candle power when forced through the gas mains throughout the said city, according to location, elevation, size and condition of the pipes and mains: And also for the further reason that the gas piping at the point of consumption is the property of the consumers, and frequently of a character that entirely changes the candle power of gas supplied through the mains of the manufacturer. Also the character of fuel may largely influence the candle power of gas, as well as the price thereof. And for the reasons aforesaid and others, said ordinance is unreasonable, impracticable of compliance therewith and invalid as against your orator.

That said ordinance is also invalid, in that it is an attempt to impair the rights of contract between your orator and said city as above set forth. That it is an attempt to take the private property of your orator for public use without just compensation That the enforcement thereof would deprive your orator of its property without the due process of law; and denies to your orator the equal protection of the laws, in violation of the provisions of the Constitution of the United States and the State of Illinois. And complainant also alleges that the amount in controversy in this cause far exceeds the sum of two thousand dollars exclusive of costs.

34 Your orator further represents, that the said arbitrary and unreasonable action of the city council of the said city of Peoria in the passage of said invalid ordinance as aforesaid, and the determination of the mayor and other executive officers of said city to enforce the same against your orator will, unless restrained and enjoined by the order and injunction of this honorable court, bring irreparable injury and loss to your orator and its said property and business, as well as to so harrass and annoy its officers and employés as to render it impracticable to conduct and carry on its business and protect its property. That the nature of the business of your orator is such, the large number of its consumers whose relation with your orator will be affected by the enforcement of said ordinance, render the courts of law inadequate to furnish your orator, its said property and business, the protection and relief from said invalid ordinance to which it is entitled, and that the attempted enforcement of said ordinance would result in innumerable suits and a multiplicity of actions.

Forasmuch therefore, as your orator is without remedy in the premises, except in a court of equity, and to the end that the said city of Peoria, which is made party defendant to this bill of complaint may be required to make full and direct answer to the same, to the next return day of said court, but not under oath, answer

under oath being waived, that on the filing of this bill of complaint, the usual writ of injunction may issue forthwith against the said city of Peoria, restraining and enjoining its mayor, chief of police, and other executive officers from in any way enforcing, or attempting to enforce said ordinance, entitled: "An ordinance regulating and fixing the maximum price of gas in the city of Peoria," passed by the city council of said city of Peoria, on the 4th day of September, A. D. 1900, or any of the provisions thereof against your orator, or from in any way interfering with your orator or its said property, or business, by reason of anything in said ordinance contained until the further order of the court herein.

35 And that upon a final hearing hereof, the said ordinance of September 4th, A. D. 1900, may be adjudged and declared invalid, null and void, and that the said city of Peoria, its mayor, chief of police and other executive officers may be permanently enjoined and restrained from enforcing, or attempting to enforce the same, or any of the provisions thereof against your orator, or from in any way interfering with your orator, its property or business, by reason of anything in said ordinance contained. And that your orator may have such other and further relief in the premises as equity may require and to your honor may seem meet.

And may it please your honor to grant the usual summons in chancery directed to the said defendant City of Peoria, commanding it to be and appear before said court on the next return day thereof, and then and there answer this bill, etc. And that said writ of injunction may be ordered forthwith on the filing of this bill of complaint as above prayed for.

PEORIA GAS & ELECTRIC COMPANY,
By F. W. LITTLE, *Its Vice Pres. & G'n'l M'g'r.*

W. T. IRWIN AND
HATCH & RITSHER,
Solicitors for Complainant.

36 In the United States Circuit Court, Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC CO. }
vs. }
CITY OF PEORIA. }

STATE OF ILLINOIS, }
County of Cook, } *ss:*

F. W. Little, being first duly sworn, on his oath states that he is vice president and general manager of The Peoria Gas & Electric Company, the complainant in the foregoing bill of complaint, and that he has read the foregoing bill of complaint and knows the contents thereof, and that the same are true.

F. W. LITTLE.

Subscribed and sworn to, before me, this 18th day of September, A. D. 1900.

[NOTARIAL SEAL.] CHARLES HUNTOON.

Endorsed: " Filed September 10, 1900. S. W. Burnham.

37 And afterwards on to-wit the 10th day of October A. D. 1900, there was filed in the office of clerk of said court in said cause the answer of the defendant, which said answer is in the words and figures following, to-wit:

38 The United States Circuit Court, Northern District of Illinois, Southern Division.

THE PEORIA GAS & ELECTRIC COMPANY
vs.
CITY OF PEORIA. } In Chancery for Injunction.

The Answer of The City of Peoria, Defendant, to the Bill of Complaint of The Peoria Gas & Electric Company, Complainant.

This defendant now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

Respondent admits that complainant is a corporation organized, existing and doing business under the general incorporation laws of the State of Illinois with its principle office in the city of Peoria and that it is an inhabitant of the northern district of Illinois as alleged in said bill; and further admits that this defendant is a municipal corporation and inhabitant of said northern district of Illinois as alleged in said bill.

Respondent further admits that by the terms of its charter the said complainant is authorized and empowered to construct and erect gas plants and works for the manufacture of gas; to construct and lay down and maintain gas mains, pipes and conduits for the distribution of gas and to sell and distribute the same to consumers for light, heat and power purposes, as alleged in said bill.

Respondent further admits that said gas corporation was incorporated under the name and style of People's Gas & Electric Company, and that it thereafter changed its name to Peoria Gas & Electric Company and that it now conducts its business under said
39 last named title. It further admits that at or about the date specified in said bill it obtained the consent of the majority of the owners of real estate having frontage upon certain streets and

avenues specified in said bill, to the laying down of pipes in said streets and avenues and that on or about the eighteenth (18) day of April 1899 it obtained an ordinance from the city of Peoria of which a substantial copy is set forth in said bill; and that it substantially complied with the terms and provisions of said ordinance on its part to be kept and performed as alleged in said bill.

Respondent further admits that complainant obtained factory grounds, and erected thereon a modern gas plant, and that it laid down pipes and mains in said city, and possessed the necessary machinery and equipments for the manufacture, distribution and delivery of gas in the different portions of said city, and to the inhabitants thereof, as alleged in said bill. Respondent believes it to be true that complainant has laid out and expended a large sum of money in the construction of its gas plant and distributing system in said city; but as to the amount so laid out and expended this defendant has no knowledge and can form no approximate estimate. Respondent has no knowledge of the mileage of the pipe laid down by complainant but admits that respondent has erected and constructed and has now a large and valuable gas plant in said city; and that it has connection with, and facilities for the furnishing of gas to, many of the residences and places of business in said city and vicinity.

Respondent alleges and shows to the court that at the time the said complainant applied to the city council of the city of Peoria for said ordinance and for the rights and franchises thereby granted the said city and inhabitants were being supplied with illuminating gas by another corporation known as the Peoria Gas Light & Coke Company which has and possessed a special charter from the State of Illinois and granted by the legislature thereof in the year 1835 and had ever since last named year been supplying the said city and inhabitants with gas for illuminating, heating and fuel purposes. That said Peoria Gas Light & Coke Company had a large and extensive plant in said city with mains and pipes extending through all the streets and avenues of said city and that no indebtedness existed against said plant, and that it had been conducted with great profit to its stockholders for more than fifty years prior to the date of said application of complainant; and that all inhabitants of said city had ample and convenient means of being supplied by said last named corporation with all the gas required by them for their consumption. Respondent shows that the uniform price charged by said Peoria Gas Light and Coke Company at the date of said application by complainant for its charter was one dollar ($1.00) per one thousand (1000) cubic feet for illuminating purposes, and seventy-five (75 cts) per one thousand (1000) cubic feet when used for heating purposes. That said Peoria Gas & Electric Company in order to obtain the consent of the owners of real estate fronting on the streets and avenues of said city, and in order to induce the city council of the said city, to grant it the rights and franchises provided for in said ordinance, gave out and represented that

the maximum price then being charged by the said Peoria Gas Light and Coke Company for gas which was one dollar ($1.00) per thousand (1000) cubic feet was entirely to- high and extortionate; and promised and agreed that if the owners of real estate fronting on said streets and avenues, and the city council of the said city, would grant to it permission to lay down mains and distributing pipes in said streets and avenues and to exercise the franchises provided for in said ordinance, it would compete with said Peoria Gas Light and Coke Company and would reduce the price of gas to reasonable rates.

Your respondent shows that by the certificate of organization of said Peoria Gas and Electric Company of record in said county of Peoria it appeared that the following parties were the sole and only stockholders in said Peoria Gas and Electric Company, namely: S. R. Clarke, B. Warren, Jr., H. Sandmeyer, C. C. Clarke, George H. Littlewood, Chauncey D. Clarke, O. J. Bailey, Ferd. Luthy, Philo B. Miles, Robert D. Clarke, F. T. Corning, and Theo. J. Miller;
41 and that the following named persons were directors thereof namely; S. R. Clarke, B. Warren Jr., G. H. Littlewood, Ferd. Luthy, O. J. Bailey, Philo B. Miles, F. T. Corning and Theo. J. Miller.

Respondent shows that said stockholders were all persons of large means residing in the city of Peoria, being composed of bankers, capitalists and persons holding positions of trust in said city and well regarded by the citizens thereof. That during the time said ordinance was being considered by the city council of said city, in order to induce the city council to grant the same, said stockholders presented a communication to the said city council which was received by said city council and read in said council meeting on the eighteenth (18) day of April 1899, in words and figures as follows:

APRIL 18, 1899.

'To the honorable mayor and city council of Peoria.

GENTLEMEN: We have today filed with the city clerk additional petitions addressed to your honorable body asking you to grant to the Peoples' Gas and Electric Company the right to lay, construct and maintain gas mains and electric wires in the streets and alleys of Peoria mentioned in the petitions. The petitions which we have filed to date present the frontage on more than fifty-two (52) miles of streets and in aggregate more than three-fourths (¾) in value of the real estate situated within the city limits of Peoria.

The signers of these petitions believe that competition will reduce the price of gas and result in saving thousand- of dollars yearly to the public of Peoria. That this view is correct is proven by the fact that the mere threat of competition has reduced the price of gas for light 20 per cent., and actual competition will do much more.

We ask for the Peoples' Gas and Electric Company only the right to do business on equal terms with the old company. We propose

to build a modern, first class, strictly up to date plant, the work of construction of which will begin at once, when the ordi-
42 nances now before you have been passed. If favorable action is taken now we shall be prepared to furnish gas to the Peoria public before Thanksgiving day.

The necessary financial arrangements have been made and every detail arranged for beginning work at once.

Thousands of dollars are ready to be paid out to Peoria workingmen, manufacturers, and dealers in supplies. We will in all cases give our home people the preference in the employment of labor and the purchase of material required in the erection of our plant.

This application for the favorable action of your honorable body is made in absolute good faith, and the right, if granted to us, will not be for sale.

As the work for erecting our plant must be done out of doors, and before freezing weather, and as the ordinances are now before you for final action, we respectfully ask an early and favorable consideration of them.

Respectfully submitted,

S. R. CLARKE,
B. WARREN, JR.,
H. SANDMEYER,
C. C. CLARKE,
GEORGE H. LITTLEWOOD,
CHAUNCEY D. CLARKE,
O. J. BAILEY,
FERD. LUTHY,
PHILO B. MILES,
ROBERT D. CLARKE,
F. T. CORNING,
THEO. J. MILLER,
Stockholders Peoples' Gas and Electric Co."

which communication was signed by the stockholders and directors of said Peoria Gas and Electric Company, then known as the Peoples' Gas and Electric Company.

Respondent says that it was owing to repeated assertions, promises and avowals of said Peoples' Gas and Electric Company, its officers, directors and agents that the amount then being charged for gas by said Peoria Gas Light and Coke Company was extortionate, and that said Peoples' Gas and Electric Company would compete with the said Peoria Gas Light and Coke Company, and fur-
43 nish gas at a much lower and reasonable rate, that said Peoples' Gas and Electric Company secured consent from the owners of real estate fronting on said streets and avenues, to the laying down of its pipes in said streets; and with like statements and inducements as in said communication above set forth presented to the members of the common council of the said city of Peoria, induced said common council to grant to said Peoples' Gas and Elec-

tric Company the franchise contained and set forth in said ordinance.

Respondent shows that said city and its inhabitants had no demand for further gas service in addition to that furnished by the Peoria Gas Light and Coke Company, except that it might obtain gas at lower and reasonable terms, as expressed in said communication. That said city did not invite said Peoples' Gas and Electric Company to come into the city, but that said corporation came on its own motion well knowing that said Peoria Gas Light and Coke Company was abundantly able to furnish and provide many times the amount of gas required for the consumption of said city and its inhabitants. Respondent alleges that the officers and agents and stockholders of said Peoples' Gas and Electric Company claimed to be well posted in regard to the cost of manufacturing and supplying gas and gave out and asserted that said maximum price of one dollar ($1.00) per thousand (1000) cubic feet charged by said Peoria Gas Light and Coke Company for illuminating purposes was extortionate.

Respondent further answering admits that said complainant completed its work and commenced the furnishing of gas to its customers within one year after the passage of said ordinance. That after the completion thereof it gave out and advertised in diverse newspapers of the city, that it would furnish gas of the character prescribed in said ordinance at the uniform rate of thirty (30) cents per thousand (1000) cubic feet; that upon such promises and assertions it gained many customers and patrons in said city, and that said complainant did in compliance with its said advertisements
furnish gas to its patrons at the rate of thirty cents (30c.)
44 per thousand (1000) cubic feet from about the — day of December 1899 to the first day of August 1900.

Respondent further says that the said Peoria Gas Light and Coke Company likewise reduced its price for gas to the uniform rate of thirty cents (30c.) per thousand (1000) cubic feet, and further advertised and gave out, that it would furnish gas at the said price, and would enter into contracts with consumers to furnish gas for one (1) year at said price, and did enter into many written contracts for service at said price. It further gave out that it would enter into contracts with patrons and consumers that the maximum price for gas for five (5) years should not exceed fifty cents (50c.) per thousand (1000) cubic feet, and it entered into many contracts with diverse consumers of that character; that it entered into a contract with the county of Peoria, which was, and is, as respondent is advised and believes, the largest consumer of gas in said city, to furnish gas to said county for one (1) year at the rate of twenty-five cents (25c.) per thousand (1000) cubic feet.

Respondent further shows upon information and belief that during the time gas was selling at said price in the city of Peoria, many shares of stock in said Peoria Gas Light and Coke Company were sold at prices greatly above the par value thereof.

Respondent is advised and believes that within the past year a great majority of the stock of said Peoria Gas Light and Coke Company has changed hands at prices in excess of 200% of its par value.

Respondent shows that in the month of July 1900 said Peoples' Gas and Electric Company whose title had previously been changed to Peoria Gas and Electric Company, in violation *to* its agreement and understanding that it would be a competitor of said Peoria Gas Light and Coke Company in the sale of gas to the said city and its inhabitants, entered into a contract and agreement with said Peoria Gas Light and Coke Company and said corporations did then and there agree that from and after the first day of August A. D. 1900, they would no longer compete for the sale and delivery of gas, and that they would sell no gas for illuminating purposes at a less rate than one dollar and twenty-five cents ($1.25) per thousand (1000) cubic feet, but would sell the same gas for heating and fuel purposes at the rate of eighty-five cents (85c.) per thousand (1000) cubic feet, and said corporation did on the 31st day of July 1900 insert in the daily papers of said city notices of their said agreement in words and figures following:

Gas for light $1.15 net.
Gas for fuel, 75 cents net.
Gas bills falling due September 1, will be rendered at the following rates
For gas used for light $1.25 per thousand cubic feet.
For gas used for fuel, registered through a separate meter, 85 cents per thousand cubic feet.
A discount of 10 cents per thousand cubic feet will be allowed on all bills paid before September 10, making the net rates:
Lighting gas, $1.15
Fuel gas, 75 cents
Customers now using gas for light and fuel, where only one meter is set on the premises, will please call at the office of the company and arrange for an additional meter.

PEORIA GAS LIGHT & COKE COMPANY,
127 *N. Jefferson Avenue.*

Gas for light $1.15 net.
Gas for fuel 75 cents net.
Gas bills falling due September 1, will be rendered at the following rates
For gas used for light $1.25 per thousand cubic feet.
For gas used for fuel registered through a separate meter, 85 cents per thousand cubic feet.
A discount of 10 cents per thousand cubic feet will be allowed on all bills paid before September 10, making the net rates:
Lighting gas $1.15
Fuel gas 75 cents.
Customers now using gas for light and fuel where only one meter is set on the premises will please call at the office of the company and arrange for an additional meter.

PEORIA GAS & ELECTRIC COMPANY,
420 *Main Street.*

Respondent further states upon information and belief that an agreement and understanding now exists between said corporations that they will not compete for the sale of gas, and that the prices therefor shall be determined only upon mutual agreement, Respondent charges that said agreement was entered into at the special request of said Peoria Gas and Electric Company, and after the said Peoria Gas and Electric Company, or persons interested with said Peoria Gas and Electric Company in monopolizing the gas business in said city, had purchased at many times more than the par value thereof, the controlling interest in the capital stock of said Peoria Gas Light and Coke Company.

Respondent charges that said agreement and combination was, and is in direct violation of the representations and agree-
46 ments of said Peoria Gas and Electric Company, with the citizens of said city of Peoria, and the common council of said city, when said ordinance was obtained; and by virtue of which said ordinance, *and* the franchises thereunder were granted to the Peoria Gas & Electric Company; and respondent shows that said Peoria Gas and Electric Company by reason of its deceptive promises and false and fraudulent representations, was enabled to obtain the right of way and lay down its pipes in the streets and avenues of said city, to excavate and damage its pavements and improvements, and to practically close out and prevent any other gas company from obtaining access to the consumers of gas in said city, and has destroyed the confidence of the said city and inhabitants to such a degree that an honest public corporation will hereafter have trouble to procure a franchise in said city.

And respondent charges that said corporation, instead of being an advantage to the said city and its inhabitants as its stockholders and officers claimed and represented would be the case, has in fact been, and is, and will continue to be, a great and permanent detriment and damage to said city and its inhabitants.

And respondent charges that the promises and statements of said Peoria Gas and Electric Company that if given a franchise it would be a competitor of said Peoria Gas Light and Coke Company and would reduce the price of gas, and that the franchises granted under said ordinance would not be for sale, were false and fraudulent and made for the purpose of securing the passage of said ordinance, and so respondent charges that said ordinance was obtained by the use of false and fraudulent representations and pretenses and that complainant is not entitled to any equity in its behalf, on account of the passage of said ordinance, as claimed in and by said bill.

Respondent further answering admits that the common council of the said city at the time stated in said bill, passed the ordinance in said bill set forth fixing the maximum rate of gas at seventy-five cents (75c.) per thousand (1000) cubic feet as alleged in said bill.

Respondent states that said ordinance was passed after the
47 said combination had been entered into between complainant and the said Peoria Gas Light and Coke Company; and that it was passed in good faith and for the protection of said city and its inhabitants against the illegal acts of oppression and extortionate discrimination of the Peoria Gas Light and Coke Company and Peoria Gas and Electric Company in combining and fixing the price of gas as set forth in said notices.

Respondent shows that at the time of the passage of said ordinance and at the present time, gas is being supplied by the said gas companies above named to the county of Peoria at the rate of twenty-five cents (25c.) per thousand (1000) cubic feet and to various citizens of said city at thirty cents (30c.) per thousand (1000) cubic feet; to other consumers in said city under contracts made during

the present year and running for five (5) years at the rate of fifty cents (50c.) per thousand (1000) cubic feet; to other citizens for heating and for fuel purposes at the rate of seventy-five cents (75c.) per thousand (1000) cubic feet, while the general public who did not prior to July 21st, 1900, enter into special contracts with said companies, or one of them, is compelled to pay $1.25 for such gas as may be required for illuminating purposes. Respondent shows that gas furnished on all the above contracts and to all citizens whether for heating or illuminating purposes, is one and the same gas, supplied through the same distributive system, and at the same cost to the company furnishing the same; and respondent alleges that it was for the purpose of preventing extortion and of requiring that gas should be furnished to all consumers within said city at fair and reasonable terms and without discrimination that said ordinance under the police power of said city was passed.

Respondent further answering says that as to the allegation in said bill that said ordinance is void for want of power in the city council of said city to pass the same, respondent can neither admit or deny such statement, but alleges that said ordinance was passed in good faith by said common council and in the belief that
48 it had power to pass ordinances for the promotion of the welfare of the inhabitants of the said city and to prevent acts of wrong, injustice and extortion from being practiced against said inhabitants.

And respondent is willing, or does hereby offer, to submit in a test case to the proper State courts of the State of Illinois, the question as to whether under the rights and franchises to it granted by the legislature of the State, it had authority to pass said ordinance and as to whether it is a valid exercise of its police power granted by the State. Respondent denies that it has any desire whatever to oppress complainant by a multiplicity of suits as stated in said bill, or that a multiplicity of suits, or more than one suit will be necessary to determine the validity of said ordinance; and further alleges that it has no desire to prosecute any suit or suits should it be determined by the court of the said State that said ordinance is invalid for want of power to pass the same, as alleged in said bill.

Respondent denies that the maximum rate for gas fixed by said ordinance is an unreasonable rate for gas, as charged in said bill; but alleges that the same is a reasonable rate, and that it can be furnished to consumers within said city at a much less rate and with profit to the company furnishing the same. And further alleges that the complainant well knew when it applied to respondent for its franchise that it would be compelled to compete with an old and well established gas company in said city which was entirely out of debt and had its plant fully paid for, and which could afford to sells its gas at reasonable rates, and at a less rate, than the maximum rate fixed by said ordinance. And respondent alleges that complainant is estopped to deny that the said maximum rate fixed by said ordinance is reasonable for the reason that gas was furnished

at said price by said Peoria Gas Light and Coke Company when complainant applied to said city for its franchise, and before it had expended any money thereon.

Respondent is advised and believes that at least one-half ($\frac{1}{2}$) of the gas sold by plaintiff is supplied for heat and fuel pur-
49 poses for which it has voluntarily fixed the net price at the maximum rate fixed by said ordinance. And respondent further shows that by its said action in combining and confederating with the said Peoria Gas Light and Coke Company to raise the price of gas as hereinbefore shown, and in violating the agreement and understanding with the citizens of Peoria and the common council thereof, by which it was enabled to secure its franchise of laying down its mains and pipes in said city, complainant alienated the friendship of said citizens and consumers of gas to such an extent that complainant is unable to receive the patronage which it would have had otherwise. And if it be true that it is impossible for complainant to furnish gas at said maximun price it is owing to its own representations under and by reason of which it prourred its franchise, and its violation thereof as aforesaid.

For further answer*ing* defendant alleges that if it be true as alleged in said bill that said ordinance of the city of Peoria fixing the maximum price for gas within said city is invalid and of no effect whatever against the complainant and for the reason that said city has no right power or authority vested in it by law to prescribe the same, as alleged in said bill, then this suit between the citizens of the same State and district does not really and substantially involve a controver-y properly within the jurisdiction of this court, and this court should proceed no further therein, and that the same should be dismissed.

And for further answer defendant says that for all the supposed grievances, wrongs and injuries set forth in said bill and for the attempted enforcement of an invalid ordinance as alleged in said bill complainant has a complete and adequate remedy at law, and that a court of equity has no jurisdiction thereof.

And further answering defendant alleges that there is no equity in said bill, or sufficient reason therein shown, for the interposition of a court of equity to enjoin the said city and its inhabitants from the enforcement of said ordinance.

50 Wherefore and for divers other causes apparent on the face of said bill, complainant prays that complainant may be denied the relief therein sought and that said bill be dismissed.

And this defendant denies all and all manner of unlawful action wherewith it is by the said bill charged, without this, there is any other matter, cause or thing in the said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove, as this

honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE CITY OF PEORIA,
By HENRY W. LYNCH,
Mayor of the City of Peoria.

W. V. TEFFT, *City Att'y.*
JACK & TICHENOR,
Sol'c'rs for D'f't.

STATE OF ILLINOIS, } ss:
County of Peoria, }

Henry W. Lynch being first duly sworn deposes and says that he is mayor of the city of Peoria, and that he has read the foregoing answer subscribed by him and knows the contents thereof, and that the same is true to his own knowledge except as to matters therein stated on information and belief, and as to those matters he believes them to be true.

HENRY W. LYNCH,
Mayor of the City of Peoria.

Signed in my presence and sworn to before me this fifth day of October A. D. 1900.

[NOTARIAL SEAL.] HENRY MANSFIELD,
Notary Public.

Endorsed: "Filed October 10, 1900. *By* S. W. Burnham, clerk."

51 And afterwards on to-wit the 22nd day of October A. D. 1900, there was filed in the office of the clerk of said court in said cause a notice, which said notice is in the words and figures following, to-wit:

52 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY
vs.
CITY OF PEORIA. } Gen. No. 287.

To W. V. Tefft, city attorney, and Jack & Tichnor, counsel:

Take notice: That the plaintiff, by its solicitors, will, on Monday morning, October 22nd, 1900, at the hour of 10 o'clock a. m., or as

soon thereafter as counsel can be heard, before the Honorable H. H. Kohlsaat, judge of said court, at his court room in the city of Chicago, in said district, present an amendment of its bill of complaint in said cause, and ask leave to file the same, without prejudice to the relief and injunction as prayed for in its said original bill of complaint in said cause, at which time you can appear and resist the same if you see fit so to do.

HATCH & RITSHER,
IRWIN & SLEMMONS,
Solictors for said Complainant.

STATE OF ILLINOIS, } ss:
County of Cook, }

W. T. Irwin, being duly sworn, on oath states: That he is one of the attorneys for the complainant in the above entitled cause, and that he served the foregoing notice upon the defendant by delivering a true copy thereof to William Jack, one of the counsel for said defendant, on the 19th day of October A. D. 1900.

[NOTARIAL SEAL.] W. T. IRWIN.

Subscribed and sworn to before me this 20th day of October A. D. 1900.

EDWARD C. RITSHER,
Notary Public.

53 Endorsement: Gen. No. 288. In the circuit court of the United States, northern district of Illinois, southern division. Peoria Gas & Electric Company *vs.* City of Peoria. Notice. "Filed October 22, A. D. 1900. S. W. Burnham, clerk. W. T. Irwin and Hatch & Ritsher, attorneys-at-law, 100 Washington street, Chicago.

54 And afterwards, to-wit on the twenty-second day of October, A. D. 1900, the same being one of the regular days of the regular October A. D. 1900 term of said court among others, proceedings were had in said court and entered of record in the words and figures following, to-wit:—

55 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

MONDAY, *October 22nd, A. D.* 1900.

By direction of Hon. Christian C. Kohlsaat, district judge.

PEORIA GAS & ELECTRIC COMPANY } 288.
vs.
CITY OF PEORIA. }

This matter coming on now to be heard on the motion of the complainant herein for leave to amend its bill of complaint herein

without prejudice to its right for relief, and injunction as prayed for in its said bill and it appearing to the court that due notice of said motion has been served upon the defendants herein, it is ordered that leave be and hereby is given to said complainant to amend its bill instanter without prejudice to its right for relief, and injunction as prayed for in its said original bill of complaint.

It is further ordered by consent of counsel for complainant and defendant that the answer heretofore filed to the original bill of complaint by said city of Peoria, stand as the answer of said city of Peoria to the bill of complaint as amended.

56 And afterwards on the same day to-wit the 22nd day of October A. D. 1900, there was filed in the office of the clerk of said court in said cause an amendment to the bill of complaint, which said amendment is in the words and figures following, to-wit:

57 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY
vs.
CITY OF PEORIA. } Gen. No. 287.

Amendment to the Bill of Complaint.

Now comes the complainant in the above entitled cause and by leave of the court first had and obtained, amends its bill of complaint herein, as follows, without prejudice to its rights for relief and injunction as prayed for in its said bill:

On the 22nd page of said bill, strike out the 2nd paragraph thereof, which reads as follows:

"Your orator represents, that the city council of said city had no power or authority to pass last named penal ordinance fixing the price at which your orator or others should charge for gas furnished to consumers. That no such power or authority has ever been delegated to said city by the legislature of the State of Illinois, and that the passage of said ordinance was an assumed power on the part of said city, regardless of any rights vested in it by the sovereign power of the State, and the same is void."

In lieu thereof, insert the following: "That the said city council of the said city of Peoria, passed and adopted said last named ordinance under the supposed authority granted to it by the legislature of the State of Illinois as contained in *clause thirteen* sec. 1, art. V; chap. 24 of the Revised Statutes of Illinois of the general incorpora-

tion act for cities, towns and villages in said State, which is as follows:

58 "To regulate the openings therein for the laying of gas or water mains and pipes, and the building and repairing of sewers, tunnels and drains, and erecting gas lights: *Provided, however*, That any company heretofore organized under the general laws of this State, or any association or persons organized or which may be hereafter organized for the purpose of manufacturing illuminating gas to supply cities or villages, or the inhabitants thereof, with the same, shall have the right, by consent of the common council (subject to existing rights), to erect gas factories and lay down pipes in the streets or alleys of any city or village in this State, subject to such regulations as any such city or village may by ordinance impose."

It is also claimed and insisted by said city that it also had the right, power and authority to pass and enforce said ordinance as against your orator by virtue of the general police powers delegated to it by the legislature of the said State of Illinois.

Your orator represents that the only power or authority vested in said city to pass such ordinance, if any, was that set forth in said clause of the statutes of the State of Illinois aforesaid; that the power to pass ordinances or regulations as set forth in such clause of said statute above set out, does not furnish or authorize said city to prescribe such exorbitant and extreme penalties as set forth in said ordinance, nor do the general police powers of the State delegated to cities, to legislate for the promotion of the good order, health and welfare of the general public, authorize or empower said city to adopt said ordinance, or prescribe and enforce such penalties as therein prescribed, and that said ordinance is therefore an attempt to impair the rights of contract between your orator and said city as above set forth; that it is an attempt to take the private property of your orator for public use without just compensation; that the enforcement thereof would deprive your orator of its property without due process of law; and said ordinance denies to your orator the equal protection of the laws, in violation of the provisions of the Constitution of the United States and the State of Illinois.

Your orator therefore prays that its said bill of complaint may be amended as aforesaid, without prejudice to its rights to the relief and injunction as therein prayed for.

59 PEORIA GAS & ELECTRIC COMPANY,
By W. T. IRWIN, *Its Solicitor.*

HATCH & RITSHER, *Of Counsel.*

STATE OF ILLINOIS, }
County of Peoria, } ss:

F. W. Little, being duly sworn, on oath states that he is the vice president of the above named complainant, and that he has read the

foregoing amendment to the original bill of complaint on file in said cause, and knows the contents thereof, and that the same is true. And also states that the matters and things as set forth in said original bill of complaint on file in this proceeding as above amended are true as therein stated.

F. W. LITTLE.

Subscribed and sworn to before me, this 19th day of October, A. D. 1900.

FRANCIS D. MUSGROVE,
Notary Public.

[NOTARIAL SEAL.]

Endorsed: "Filed October 22, 1900. S. W. Burnham, clerk. W. T. Irwin and Hatch & Ritsher.

60 And afterwards, to-wit on the twenty-fifth day of October, A. D. 1900, the same being one of the regular days of the regular October A. D. 1900, term of said court, among others, proceedings were had in said cause and entered of record in the words and figures following, to-wit:—

61 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

THURSDAY, *October 25th, A. D.* 1900.

By direction of Hon. Christian C. Kohlsaat, district judge.

PEORIA GAS & ELECTRIC COMPANY
vs.
CITY OF PEORIA. } 288.

The court having considered the motion of the defendant to dismiss for want of jurisdiction and being fully advised in the premises, denies said motion.

62 And afterwards, to-wit on the twenty-ninth day of October, A. D. 1900, the same being one of the regular days of the regular October A. D. 1900 term of said court, among others, further proceedings were had in said cause and entered of record in the words and figures following, to-wit:—

63 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

MONDAY, *October 29th, A. D.* 1900.

Present: Hon. Christian C. Kohlsaat, district judge.

PEORIA GAS & ELECTRIC COMPANY
vs.
CITY OF PEORIA. } 288. In Chancery.

On motion of complainant ordered that injunction issue upon the complainant giving bond in the sum of ten thousand dollars.

64 And afterwards to-wit on the 1st day of November A. D 1900, there was filed in the office of the clerk of said court in said cause, an injunction bond, which said bond is in the words and figures following, to-wit:

65 Know all men by these presents, that the *Peoria Gas and Electric Company*, a corporation organized and existing under the laws of the State of Illinois, as principal, and the National Surety Company of New York, a corporation organized and existing under the laws of the State of New York, as surety, are held and firmly bound unto the City of Peoria, a municipal corporation, for the use of said city and such inhabitants thereof as are consumers of gas furnished by said Peoria Gas and Electric Company, in the penal sum of ten thousand (10000) dollars, good and lawful money of the United States of America, well and truly to be paid to said city for the use aforesaid.

In witness whereof the parties hereto have caused this obligation to be executed by their proper officers this twenty-ninth day of October, A. D. 1900.

The condition of this obligation is such, that whereas the said Peoria Gas and Electric Company heretofore filed in the United States circuit court for the northern district of Illinois, southern division thereof, its bill of complaint as amended, praying for an injunction against the said City of Peoria, restraining and enjoining said city from enforcing a certain ordinance entitled "An ordinance regulating and fixing the maximum price of gas in said city of Peoria," passed by the city council of said city on the fourth day of September, A. D. 1900, and

Whereas an injunction has been ordered issued as prayed for in said bill of complaint as amended,

Now if the said Peoria Gas and Electric Company shall
66 well and truly pay and refund to the said City of Peoria for the use of such inhabitants thereof as are consumers of gas furnished by the said Peoria Gas and Electric Company all damages

that may accrue to said city and said consumers of gas by reason of the wrongful suing out of said injunction in the event that the complainant's bill as amended shall fail and said injunction shall be dis-olved, together with such costs and attorney's fees as may be adjudged by the court, then this obligation shall be void; otherwise to remain in full force and virtue.

PEORIA GAS AND ELECTRIC COMPANY,

[CORPORATE SEAL.] By F. W. LITTLE, *Vice President.*

Attest:

THEO. J. MILLER, *Secretary.*

NATIONAL SURETY COMPANY OF NEW YORK,

[CORPORATE SEAL.] By ADAMS A. GOODRICH,
Resident Vice President.

CYRUS W. GEORGE,
Resident Ass't Secretary.

Revenue stamps 25c.

67 Endorsement: Gen. No. 288. S. D. In the circuit court of the United States, northern district of Illinois. Peoria Gas and Electric Company *vs.* City of Peoria. Bond. Filed November 1, 1900. S. W. Burnham, clerk.

68 And afterwards on the same day to-wit the first day of November, A. D. 1900, there issued out of the office of the clerk of said court in said cause, an injunction writ, which said writ is in the words and figures following, to-wit:

69 Circuit Court of the United States of America, Northern District of Illinois, Southern Division, *ss:*

The United States of America to City of Peoria and to your counselors, attorneys, solicitors, trustees, agents, clerks, employés, servants and workmen, and to each and every of you, Greeting:

Whereas, it has been represented to the judge of our circuit court of the United States for the northern division of the northern district of Illinois in chancery sitting, on the part of Peoria Gas and Electric Company, complainant in its certain bill of complaint, exhibited in our said circuit court, on the chancery side thereof, before the judges of said court, against you the said City of Peoria, to be relieved touching the matters complained of. In which said bill it is stated, among other things, that you are combining and confederating with others to injure the complainant touching the matters set forth in said bill, and that your actings and doings in the premises are contrary to equity and good conscience. And it being or-

dered that a writ of preliminary injunction issue out of said court, upon said bill, enjoining and restraining you, and each of you, as prayed for in said bill; we, therefore, in consideration thereof, and of the particular matters in said bill set forth, do strictly command you, the said City of Peoria, your counselors, attorneys, solicitors, trustees, agents, clerks, employés, servants and workmen, and each and every of you, that you do absolutely desist and refrain from, enforcing a certain ordinance entitled "An ordinance regulating and fixing the maximum price of gas in the said city of Peoria," passed by the city council of said city on the fourth day of September A. D.
70 1900, until this honorable court, in chancery sitting, shall make other order to the contrary. Hereof fail not, under the penalty of what the law directs.

To the marshal of the northern district of Illinois, to execute, and return in due form of law.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States of America, at Chicago, in said district, this 1st day of Novemberin the year of our Lord one thousand nine hundred and of our Independence the one hundred and twenty-fifth year.

[COURT SEAL.] S. W. BURNHAM, *Clerk.*

And afterwards said writ was returned in to the office of the clerk of said court on the third day of November, A. D. 1900, with the return of the marshal indorsed thereon, in words and figures following to-wit:

I have served the within writ within my district in the following manner to-wit:—

Upon the City of Peoria therein named by personally delivering a true copy of the same to Henry W. *Hynch*, Esq., mayor of the city of Peoria, Illinois, at Peoria, Illinois, this 2nd day of November A. D. 1900.

JOHN C. AMES,
U. S. Marshal.
By S. O. TRIPP, *Deputy.*

Fees.

1 service	$2.00
1 mile	.06
	$2.06

Endorsed: "Filed November 3, 1900, S. W. Burnham, clerk." W. P. Irwin & Hatch & Ritsher, compl't's sol'rs.

71 And afterwards to-wit on the fifth day of November A. D. 1900, there was filed in the office of the clerk of the said court in said cause a replication, which said replication is in the words and figures following, to-wit:

72 In the United States Circuit Court, Northern District of Illinois, Southern Division.

THE PEORIA GAS AND ELECTRIC COMPANY vs. CITY OF PEORIA. } In Chancery. Gen. No. 287.

Replication of The Peoria Gas and Electric Company, Complainant, to the Answer of City of Peoria, Defendant.

This repliant saving and reserving unto itself all and all manner of advantage of exception to the manifold in sufficiencies of the said answer, for replication thereunto says: That it will aver and prove its said bill as amended to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material, or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all such matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill as amended it has already prayed.

PEORIA GAS & ELECTRIC COMPANY,
By W. T. IRWIN AND
HATCH & RITSHER,
Solicitors for Complainant.

HATCH & RITSHER,
Sol'rs & of Counsel.

Endorsed: "Fled November 5th, 1900, S. W. Burnham, clerk."

73 And afterwards, to-wit on the twentieth day of May A. D. 1901, the same being one of the regular days of the regular April A. D. 1901 term of said court, among others, further proceedings were had in said cause and entered of record in the words and figures following, to-wit:—

74 In the United States Circuit Court, Northern District of Illinois, Southern Division.

MONDAY, *May 20th, A. D.* 1901.

Present: Hon. Christian C. Kohlsaat, district judge.

PEORIA GAS AND ELECTRIC COMPANY vs. CITY OF PEORIA. } 288. In Chancery.

Now come the parties by their solicitors and by agreement in open court, it is hereby ordered that Mr. I. C. Pinckney, of the city of

Peoria, in said district and division, be, and he is hereby appointed a special commissioner to take the proofs herein and report the same with his findings and conclusions herein with all convenient speed.

75 And afterwards, on, to-wit, the twenty-fourth day of April, A. D. 1902, there was filed in the office of the clerk of said court in said cause a notice for rule on defendant to close proofs; which said notice is in the words and figures following, to-wit:

76 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the District Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS AND ELECTRIC COMPANY
vs.
CITY OF PEORIA. } In Chancery. #288.

To Henry Mansfield, city attorney, and F. H. Tichenor, of counsel:

Please take notice: That on Thursday, the 24th day of April, 1902, at the hour of 2 o'clock p. m., or as soon thereafter as counsel can be heard, before the Honorable J. Otis Humphreys, judge of the said court, in the room usually occupied by him as a court room in the city of Peoria, Illinois, we shall move the court to enter an order in the said cause, requiring the defendant herein to close its proof by a short day to be fixed by the court, at which time you may be present if you see fit.

E. C. RITSHER,
W. T. ABBOTT,
W. T. IRWIN,
Solicitors for Complainant.

Received a copy of the above notice this 24th day of April, A. D. 1902.

F. H. TICHENOR.

Endorsed: "Filed April 24th 1902, Marshall E. Sampsell, clerk. F. C. Howe, deputy clerk." E. C. Ritsher—W. T. Abbott & W. T. Irwin compl't's att'ys.

77 And afterwards, on, to-wit, the twenty-fourth day of April, A. D. 1902, there was filed in the office of the clerk of said court in said cause a motion for order on defendant to close proofs by short day to be fixed by the court; which said motion is in the words and figures following, to-wit:

78 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS AND ELECTRIC COMPANY
vs.
CITY OF PEORIA. } In Chancery. # 288.

And now comes the complainant herein, by W. T. Irwin, E. C. Ritsher and W. T. Abbott, its solicitors, and moves the court to enter an order herein requiring the defendant herein to close its proofs within a short day to be fixed by the court.

E. C. RITSHER,
W. T. ABBOTT,
W. T. IRWIN,
Solicitors for Complainant.

Endorsed: "Filed April 24th 1902, Marshall E. Sampsell, clerk, by F. C. Howe, deputy clerk."

79 And afterwards on to wit the twenty-fourth day of April, A. D. 1902, there was filed in the office of the clerk of said court in said cause, an affidavit of E. C. Ritsher in support of motion for rule on defendant to close proofs, which affidavit is in the words and figures following, to wit:

80 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS AND ELECTRIC COMPANY
vs.
CITY OF PEORIA. } In Chancery. # 288.

Edward C. Ritsher, being first duly sworn, on oath says, that he is one of the solicitors for the complainant in the above entitled cause.

Affiant further says, that the bill of complaint herein was brought for the purpose of enjoining the City of Peoria from enforcing an ordinance fixing the price of gas at seventy-five cents per one thousand cubic feet delivered to consumers, and that a temporary injunction issue in said cause.

Affiant further says, that said suit was begun in month of September, 1900, and that negotiations for an amicable settlement of the litigation were in progress at different times until the month of August, 1901.

Affiant further says, that it becoming apparent in the month of August, 1901, that the suit must be tried, application was made to the Honorable Isaac C. Pinkney, (special commissioner, to take testimony in this case) to set down said cause for the taking of testimony immediately after the summer vacation, and thereupon said cause was set down for hearing by said special commissioner, for November 8th, 1901.

Affiant further says, that the taking of testimony on the part of the complainant herein was prosecuted with all diligence
81 and that said complainant closed its examination in chief on January 8th, 1902, having fully completed the same within the period of sixty-five days after commencing to put in its proofs.

Affiant further says, that twenty-four days out of said sixty-five days were occupied in hearing and necessary time for travel, without taking into account adjournments from day to day at Peoria, and without taking in to account any time for travel between Peoria and Chicago.

Affiant further says, that during the 108 days which elapsed since complainant closed its case in chief, that the defendant has occupied an aggregate of ten days in putting in its proof, and that forty-two days have elapsed since the last proof was offered.

Affiant further states, that the complainant company has invested about the some of five hundred thousand dollars in cash in its plant and business in Peoria, and that the pendency of the present litigation works a serious injury to said company, and renders it impracticable for it to extend its mains or enter into any contracts for the improvement of its property by reason of the uncertainty as to its income,—the same depending upon the final decision of the court in this case.

EDWARD C. RITHSER.

Subscribed and sworn to, before me, this 24th day of April, A. D. 1902.

[NOTARIAL SEAL.] W. I. SLEMMONS,
Notary Public.

Endorsed: "Filed April 24th, 1902. Marshall E. Sampsell, clerk. By F. C. Howe, deputy clerk." E. C. Ritsher, W. T. Abbott & W. T. Irwin, solicitors for complainant.

82 And afterwards, to-wit on the twenty-fourth day of April A. D. 1902, the same being one of the regular days of the regular April A. D. 1902 term of said court, among others, further proceedings were had in said cause and entered of record in the words and figures following, to-wit:

83 *Order, Thursday, April* 24, 1902.

Present: Hon. J. Otis Humphrey, district judge.

PEORIA GAS AND ELECTRIC COMPANY
vs.
CITY OF PEORIA. } *288.* No. 288. Chancery.

Now come the parties by their solicitors and the defendant is ruled to close its testimony herein by September 1st, next, the complainant its rebuttal by October 1st, next and the master to make his report herein by November 15, 1902.

84 And afterwards, to-wit on the twenty-seventh day of June, A. D. 1902, the same being one of the regular days of the regular April A. D. 1902 term of said court, among others, further proceedings were had in said cause and entered of record in the words and figures following, to-wit:

85 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

FRIDAY, *June 27th, A. D.* 1902.

Present: Hon. J. Otis Humphrey, district judge.

PEORIA GAS AND ELECTRIC COMPANY
vs.
CITY OF PEORIA. } 288. In Chancery.

This day this cause coming on to be heard by the court, on exceptions to the ruling of the special master herein denying the defendant's application to compel the production of certain books, records and documents of the Peoria Gas Light and Coke Company sought to be obtained, through a *subpœna duces tecum* served upon one H. W. Bicknell, an employee of said company, dated June 25, A. D. 1902, and the special master having denied the application of the defendant to compel the production of said books, records and documents upon the affidavit of Henry Mansfield, city attorney of the city of Peoria and counsel for the defendant; and upon exception being duly taken to the said ruling and the said cause being referred to the court, and the court having heard the arguments of counsel and being fully advised in the premises, doth order, adjudge and decree that the said ruling of the said special master upon such application by the defendant, The City of Peoria, be and the same is hereby fully sustained, and the exceptions to the said ruling be and the same are hereby overruled.

86 And afterwards, to-wit on the twenty-first day of October, A. D. 1902, the same being one of the regular days of the regular October A. D. 1902 term of said court, among others, further proceedings were had in said cause and entered of record in the words and figures following, to-wit:

87 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

TUESDAY, *October* 21*st*, *A. D.* 1902.

Present: Hon. J. Otis Humphrey, district judge.

PEORIA GAS & ELECTRIC COMPANY vs. CITY OF PEORIA. } 288. In Chancery for Injunction.

This day this cause coming on to be further heard upon the motion of I. C. Pinckney, special master in this cause, to whom the same was referred by agreement of counsel for the respective parties, to take testimony and report the findings of fact and conclusions of law herein, for an order of this court fixing his compensation as said special master for taking the testimony and hearing the oral arguments of counsel for the respective parties; and the parties to said cause being now present in court by their respective counsel, and the court being fully advised in the premises, doth order and decree, that the said special master's compensation for his services aforesaid, be, and the same is hereby fixed at the sum of twenty-five dollars per day ($25.00), and that the said sum be paid to the said master by the respective parties to this cause for the time occupied by them, each respectively, in the taking of testimony and the oral arguments of counsel in said cause before said master, the amount so paid to said master under this order to abide the final judgment of the court herein.

The court hereby expressly reserves for further consideration the compensation to said master in said cause, of all matters not herein expressly provided for.

88 And afterwards on the same day, to-wit the twenty-first day of October, A. D. 1902, the same being one of the regular days of the regular October A. D. 1902 term of said court, there being present as before, among others, further proceedings were had in said cause and entered of record in the words and figures following, to-wit:—

89 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

TUESDAY, *October* 21*st*, *A. D.* 1902.

Present: Hon. J. Otis Humphrey, district judge.

PEORIA GAS & ELECTRIC COMPANY
vs.
CITY OF PEORIA. } 288.

For good cause shown the time for the master to hear final argument herein is hereby extended to November 10th, next.

90 And afterwards on to-wit the twelth day of November, A. D. 1902, there was filed in the office of the clerk of said court in said cause, a motion for order fixing master's compensation, which motion is in the words and figures following, to-wit:

91 The United States Circuit Court, Northern District of Illinois, Southern Division.

THE PEORIA GAS & ELECTRIC COMPANY
vs.
CITY OF PEORIA. } In Chancery for Injunction.

Now on this day, comes I. C. Pinckney, special master in this cause, to whom the same was heretofore referred to take and hear the proof of the respective parties thereto, and report the same together with his conclusion of law and fact therein, to the court, and moves the court for an order herein fixing his compensation as said special master, for and including the time expended by him in the hearing and taking of said proofs of the respective parties, and also including the time of the arguments of counsel before said special master.

——— ———,
Special Master in said Cause.

Endorses: "Filed November 12, 1902. Marshall E. Sampsell, clerk."

92 And afterwards on to-wit the third day of June, A. D. 1903, there was filed in the office of the clerk of said court in said cause, the special master's report, which said report is in the words and figures following, to-wit:

93 Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY, Complainant,
vs.
CITY OF PEORIA, Defendant. } In Chancery for Injunction, &c.

Special Master's Report.

To the honorable the judge of said court:

Pursuant to the order of reference made in the above entitled suit on the 20th day of May, 1901, and by stipulation of the parties hereto, the hearing of this cause was commenced before me on the 5th day of November, 1901, in the city of Chicago, Illinois. Thereafter, at the instance of complainant, testimony was taken at the cities of St. Paul, Minneapolis and Duluth, Minn., also at Kansas City, Missouri, and Peoria, Illinois. Testimony was also taken at the instance of the defendant in the cities of Syracuse, N. Y. and Chicago and Peoria, Ill., at which last named place the complainant closed its evidence in the rebuttal on the 20th day of October, 1902, as will more fully appear from the report of the stenographer thereof and transcript of the testimony filed therein.

At said hearing Mr. W. T. Irwin, Mr. E. C. Rit*h*ser and Mr. W. T. Abbott appeared for the complainant, and on the hearing of the complainant's evidence in chief Mr. Mansfield appeared for the defendant, and thereafter, and until the close of the hearing, Mr. F. H. Tichenor also appeared for the defendant, The City of Peoria.

94 After having heard the evidence and oral arguments of counsel for the respective parties, the case was taken under advisement until this date, and now being advised of the evidence and the law relating thereto, I find and state the following facts, and conclusions of law:

Facts.

1.

Complainant is a corporation, duly incorporated under the general incorporation laws of the State of Illinois, on the 21st day of March, A. D. 1899, having its principal office in the city of Peoria, in said State.

2.

That under its charter powers it is authorized to construct gas plants for the manufacture, sale and delivery of gas for light, heat and power purposes.

3.

That on the 3rd day of March, 1899, it made application to the city council of the city of Peoria, Illinois, for permission and authority to construct and operate gas works in the city of Peoria, and to enter upon the public streets and highways therein for the purpose of laying pipes, mains and feeders in and through which it could deliver gas to consumers for any of the purposes specified in its charter.

4.

That said application was, by the city council referred to a standing committee of its body, known as the committee on streets, alleys and bridges, and on the 18th day of April, thereafter, the
95 ordinance under which complainant occupies the public highways of the city of Peoria, and conducts its business of manufacturing and distributing gas, for light, fuel, heat and power purposes, was adopted by the city council.

5.

The conditions precedent fixed by this ordinance were all met and observed by complainant. It purchased a site centrally located, and built on such site its manufacturing plant for the manufacture of coal gas. This plant consists of a retort house containing seven (7) benches of nine (9) retorts to each bench, with a maximum bench capacity of from six hundred (600) thousand to six hundred and fifty (650) thousand cubic feet of gas per day of twenty-four (24) hours, a purifying house, boiler and pump house, meter house, office, store-room, repair shop, coal and coke shed, gas storage holder, ammonia and tar wells.

6.

Complainant entered upon the public highways of the city of Peoria, where by its ordinance it was authorized, and laid twenty-six and one-half (26½) miles of cast-iron mains for distribution of its gas to consumers for heat and illuminating purposes. These mains consist of— 1758 feet of 16 inch

20760	"	"	12	"
482	"	"	10	"
20229	"	"	8	"
12874	"	"	6	"
80452	"	"	4	" and
260	"	"	2	"

mains, and about the 1st day of May, 1900, commenced to deliver gas to its patrons, through the same, and has since continued so to do.

7.

On September 1st, 1900, complainant had also installed about two thousand service pipes for conveying gas from its main pipe
96 system to the premises of gas consumers, and had also set and in use seventeen hundred and fifty-eight (1758) meters, these service pipes being installed, and the meters set without charge to the consumers. The total cost of complainant plant and distributing system as hereinbefore substantially described, including the amount of the purchase price paid for the real estate on which its manufacturing plant is located, and including also the expenses necessarily incident to the organization of the company, and the further expense of procuring the consents of owners of property fronting upon the public highways it is authorized by its ordinance from the city of Peoria, to occupy with its distributing mains, then represented an expenditure, or cost, to the complainant of four hundred thirty-four thousand two hundred fifty-two dollars and thirty-five cents ($434,252.35).

8.

This plant as so constructed, and then in operation, was well designed for the prudent and economical manufacture of coal gas, and represented the highest efficiency, not only for the economical production of gas, but also for the production of the valuable bi-products known as coke, coal tar and ammonia liquor, the sale of which tends to reduce the net cost of the manufacture of coal gas, and for which bi-products there is as a rule a ready market.

9.

The ordinance of the city of Peoria, passed April 18th, 1899, to complainant, under which it now occupies the public highways therein for the purpose of its distributing mains, contains no provisions regulating the price it may charge consumers, or takers of gas manufactured by it, nor does such ordinance contain any reservation of power, or authority to the city, to at any time thereafter fix such price. At the time complainant company presented its
97 application to the city council for a license to construct its plant, and occupy the public highways of the city, for the purpose of distributing gas to its citizens, and for many years prior thereto, substantially the same territory of the city complainant is by its ordinance authorized to occupy, the Peoria Gas Light & Coke Company were in possession of, and actively engaged in the same business, and until complainant had completed and put in operation its plant, the Peoria Gas Light & Coke Company held an unmolested field therein, for the sale of its gas. Up to the year 1897, and from time to time prior thereto this last named company had reduced the price of gas to consumers, and on or about the first of the year 1897 its prices were, for illuminating gas $1.35 gross, or $1.25 net, per

thousand cubic feet, if paid on or before the 10th day of the month next following, and $.75 per thousand cubic feet for fuel gas. These prices continued up to April 1st, 1899, at which date the price charged by it for gas used for illuminating purposes was reduced to $1.00 net per thousand cubic feet. In April, 1900, a further reduction was made, the price being $.30 net, per thousand cubic feet for all gas used for light or fuel purposes. August 1st, following, prices were again changed by both companies to $1.15 net, per thousand cubic feet for illuminating, and $.75 net for fuel gas, and on January 1st, 1901, the old company fixed the price at $1.00 net per thousand cubic feet for gas used for either lighting or heating purposes. About September 1st, 1901, complainant established the same rates.

Following the change in rates made on August first (1st), 1900, on to-wit, the fourth (4th) day of September, 1900, the city council of the city of Peoria, adopted an ordinance, entitled "An ordinance regulating and fixing the maximum price of gas in the city of Peoria," said ordinance reads as follows:

98 Be it ordained by the city council of the city of Peoria:

SECTION 1. That the maximum price of gas furnished the city of Peoria, and the citizens thereof, and all consumers of gas therein, shall not exceed the sum of seventy-five cents (75c.) per thousand cubic feet; such gas so furnished to afford a light of not less than eighteen (18) candle power, to be measured and ascertained at the place of consumption, in said city, by the most modern appliances known to science for measuring the candle power of illuminating gas; and the Peoria Gas Light & Coke Company, and the Peoria Gas & Electric Company, and any other company, corporation, person, or persons, who are now or may hereafter furnish gas to consumers in the city of Peoria, are hereby authorized and empowered to charge all consumers of gas in said city a sum not in excess of seventy-five (75c.) cents per thousand cubic feet.

SECTION 2. That any company, corporation, person or persons who shall in violation of the provisions of the preceding section charge or require the city of Peoria, or any citizen thereof, or any consumer of gas therein, to pay for gas furnished to it or them, or either of *of* them, a sum in excess of seventy-five (75c.) cents per thousand cubic feet, or who shall furnish to said city of Peoria, or any citizens thereof, gas less than eighteen (18) candle power, shall be subject to a penalty of not less than twenty-five ($25) dollars, nor more than two hundred ($200) dollars for each and every offense.

SECTION 3. That any company, corporation, person, or persons, who shall remove any meter or meters from the house, store factory or premises of any consumer of gas in the city of Peoria, against the will and consent of any such owner of gas who is willing to pay for gas furnished him, it or them, by any company, corporation, person, or persons, the price established and fixed in section one (1) of this ordinance, shall be subject to a penalty of not less than twenty-five ($25) dollars, nor more than two hundred ($200) dollars for each and

every offense: Provided, however, that any company, corporation, person, or persons furnishing gas to consumers in the city of Peoria, shall have the right to remove any meter, or meters, for the purpose of repairing the same, on condition that such meter, or meters, so removed shall be replaced or a new one substituted in its place within twenty-four (24) hours of the time of the removal of any such meter, or meters.

SECTION 4. This ordinance shall be in force and effect from and after its passage and due publication, as provided by law: Provided, that nothing herein contained shall impair the obligation of any contract in existence between the city of Peoria and either of said gas companies above mentioned.

SECTION 5. All ordinances or parts of ordinances in conflict with this ordinance, are hereby repealed, subject to the proviso contained in section four (4) of this ordinance.

Passed in council this 4th day of September, A. D. 1900.

HENRY W. LYNCH, *Mayor.*"

99 The bill in this case seeks to enjoin the enforcement by defendant of the provisions of the above ordinance, on the grounds chiefly that, said ordinance is an attempt to impair the rights of contract between it and the defendant, and that the enforcement of its provisions would constitute the taking of the private property of complainant for public use, without just compensation. Further that, the penalties prescribed for a violation of its provisions, are "exorbitant and extreme," and are not sanctioned by the laws of the State of Illinois.

The defendant seeks to justify the provisions of the ordinance relative to the maximum price to be charged for gas, as therein fixed on statements and representations made by certain stockholders in complainant company, to members of the city council of the city of Peoria, and other citizens of Peoria, at the time complainant was seeking the adoption by the city council of its license ordinance, that was passed on April 18th, 1899, under and by virtue of which it engaged in the manufacture and distribution of gas in the city of Peoria, and it claims that it was by reason of these statements and representations that complainant was enabled to obtain its license ordinance from the defendant; that the maximum rate ordinance was passed in good faith, and that the rates fixed therein are reasonable, &c.

It appears from the evidence that statements and representations were made to the members of the council by persons who were at the time, and are now stockholders in complainant company. It does not appear, however that any corporate action taken at any time by complainant, authorized such statements, or representations, nor does it appear that in any such statements or representations any fixed price at which complainant would furnish gas to consumers was stated, the substance of them being that, "the price would be cheapened."

100 These statements and representations, of whatever character they may have been, had much influence with the action subsequently taken by the city council, when complainant's ordinance, giving it permission and authority to prosecute its business in the city of Peoria, and to use and occupy the public highways therein for that purpose, was before that body for consideration. It was with the belief that complainant would become an active competitor of the old gas company, for the gas business in the city of Peoria, and that the price of the same would thereby be cheapened to its citizens, that led the municipal body to grant complainant its license. Complainant sought the privileges therein contained from the city of Peoria. The city held out no inducements to complainant further than those contained in the grant it now occupies, under which it was given the right to compete for the gas business in the Peoria territory, on equal terms with the old established company. Defendant now claims that these statements and representations then made, and which no doubt were largely instrumental in complainant securing its license from the city, constitute an estoppel against complainant's right, to now be relieved against the limitations contained in this ordinance, which complainant claims injuriously affect its interests in the prosecution of the business it was licensed to carry on within the city under its ordinance of April 18th, 1899. The soundness in law of this claim must, and does rest solely in facts, existing at the time the defendant had before it the ordinance in controversy in this cause, relative to the cost of the manufacture and distribution of coal gas in the city of Peoria, and the knowledge, and means of knowledge the city council had, or might have had, of ascertaining the reasonableness and fairness of such legislation.

11.

101 The ordinance in controversy in this case was not passed by the common council of the city of Peoria for about eighteen months after the time that complainant procured its original license from the city. At the time the ordinance fixing the maximum price of gas was pending and before its adoption by the city council, it appears complainant, through one of its officers, stated to the mayor of Peoria, and to some of the members of the city council, that gas could not be made by it, at the maximum price fixed by this ordinance, and the mayor was then requested, either personally, or through any representative of the city he might select, to make an examination of the books of complainant, to determine for the guidance of the council, what it was then costing complainant to manufacture gas, and what would be the probable cost in the future. There is no evidence in the record in this case showing, or attempting to show, that the defendant ever sought the opportunity, or privilege of making any investigation of complainant's books, that had been offered it for the express purpose of guiding its legislative body in fixing, in the ordinance it then had under consideration

reasonable and fair rates, to be charged for gas in the city, nor is there one word of testimony in denial that such an opportunity was tendered it by complainant, nor is there any evidence that defendant had knowledge on this subject from any other source.

12.

The license granted by the defendant, The City of Peoria, on April 18th, 1899, contains no requirements as to the candle power of gas to be furnished by complainant. Neither is it practicable under the present method of conveying gas from the place of manufacture to the point of consumption, to maintain eighteen (18) candle illuminating power at all points of consumption, without the excessive use of enrichers in its manufacture. Where this is attempted by the producer, it results in discomfiture to the consumer, by smoking when ignited, and the giving off of unpleasant orors.

102 13.

The cost of the production of coal gas cannot be determined by any fixed standard. The cost of raw materials necessary to its production, are variable; necessary labor in the successful operation of complainant's plant, including its distributing system, and also its manufacturing plant have no fixed invariable scale, the market value of residuals obtained, is likewise an uncertain feature.

14.

The depreciation of a manufacturing coal gas plant, under the evidence in this case, may be conservatively found to be five (5%) per cent. per annum on the first cost. Some parts of the plant, particularly the retort ovens, depreciate very rapidly, they become burnt out and unfit for further service after two years. These retorts are a necessary part of a plant, under the present known methods of the manufacture of coal gas. They are expensive to install, and more expensive to replace.

15.

The depreciation to the distributing system of complainant's plant is largely due to natural conditions, found to exist in the soil where its mains and service connections are laid. These destructive agencies are found to a greater or less extent in the soils of all cities and vary according to the character of the soil. Complainant's mains are of cast-iron, its service pipes are of wrought iron with connections of lead, each varying in thickness in proportion to size. By reason of these soil conditions the lead pipes depreciate more rapidly than the cast-iron mains, or at the rate of about five (5%) per cent. per annum on the original cost, while the depreciation to the cast-iron mains does not exceed two (2%) per cent. per annum. Consumers' meters, which also form a part of complainant's distributing

system, are likewise subject to an average annual depreciation, due to various causes beyond complainant's control, which under the
103 evidence may be conservatively placed at nine (9%) per cent. per annum on the cost of the total number in use.

16.

Depreciation exists and continues in a coal gas plant, notwithstanding repairs that are necessary to be made, to maintain its working efficiency, and is an expense in the cost of the manufacture and distribution of gas, that is outside of, and in addition to repair expenses. These latter increase as the plant grows older, and at about the periods herein given, notwithstanding repairs, the several parts so far depreciate as to render them valueless and useless for further service.

17.

The first cost to complainant in the manufacture and distribution of coal gas in the city of Peoria, may be said to be covered by the following charges, viz:

Interest at the rate of five (5 %) per cent. per annum on the cost of its manufacturing plant and distributing system, which at the close of the taking of the testimony in this cause was, four hundred thirty-nine thousand seven hundred and twenty-five ($439,725) dollars. This sum represents its fair market value, and only the money then invested therein by complainant: also depreciation at the rate of five (5 %) per cent. per annum on the cost of the manufacturing plant, less the price paid for the real estate on which it is located; five (5 %) per cent. per annum depreciation on the cost of the service connections installed; nine (9 %) per cent. per annum depreciation on the cost of consumers' meters; five (5 %) per cent. per annum depreciation on the amount invested in tools, furniture and fixtures; two (2 %) per cent. per annum depreciation on the cost of distributing mains; also the cost of the material used; necessary labor; repairs to the system; leakage, or unaccounted for gas, as
104 shown by the difference of registration in the station meter register, and consumers' meters; uncollectible accounts, taxes and office expenses.

18.

From the cost as so ascertained should be deducted the value of residuals obtained from each ton of gas coal carbonized. These values are not determinable by any fixed scale, the demand of local markets, *i. e.* the place where produced, having such importance in the prices obtained therefor, and correspondingly as much in fixing the net cost of coal gas to the complainant. The most valuable of these residuals is coke, the demand for which in the city of Peoria, is much below the quantity here produced.

19.

Under present improved methods in the manufacture of coal gas, a ton of gas coal carbonized, yields about ten thousand (10,000) cubic feet of gas. This increase- production over the earlier methods employed, is by reason of the present use of regenerative furnaces for heating the retorts, and the use of oxide in place of lime in the purification process. The residuals produced per ton of coal carbonized, reduce the cost of gas to complainant, about thirty-three (33 %) per cent. The gas manufactured by complainant from Sept. 1st, 1900, up to Sept. 1st, 1901, as shown by the evidence, cost the complainant in the holder, per thousand cubic feet, seventy-seven and nine-tenths (77.9) cents after deducting from the cost of production the market value of all residuals obtained from the coal carbonized. This cost was upon the basis of an output of about fifty-one (51) million cubic feet per year, and does not include the cost of distribution.

In the latter part of October, 1901, complainant entered into a contract with the Peoria Gas Light & Coke Co. to supply it with gas for the use of its consumers and customers. This last named company then, and for many years prior had occupied sub-
105 stantially the same territory that complainant was then occupying with its distributing system, and had in addition about twenty miles or mains in the public highways that complainant did not then, nor does not now occupy. It had also in use about four thousand four hundred (4400) meters. This contract was terminated by the Peoria Gas Light & Coke Company on August 19th, 1902, but during the ten months' period it was in force complainant furnished and delivered into the holders of the Peoria Gas Light & Coke Company upwards of one hundred and four (104) million cubic feet of gas, at a charge to it of seventy-five (75) cents per thousand cubic feet. This gas was delivered by means of a pipe about three hundred (300) feet long laid upon the premises of the two companies, connecting the gas holders of the Peoria Gas Light & Coke Company with the station meter of the complainant, which registered the amount supplied. The difference in quantity between complainant's station meter and the amount as indicated by the consumers' meters, was paid for by the old company at the rate of fifty (50c.) cents per thousand cubic feet. It was delivered by the old company through its own distributing system to its own consumers and at its cost. The gas so furnished and the price charged by complainant therefor, is a question purely of business judgment between private parties, and such price cannot be accepted as conclusively establishing the cost to complainant of gas manufactured by it, where it must also bear the expenses incident to distribution, as is the case in supplying its own consumers throughout the city.

21.

The gas consumption in the city of Peoria is now about one hundred and sixty-five (165) million cubic feet per year, the use of which for illuminating and heating purposes is about equal. Of this total consumption, complainant is supplying about fifty-five (55) million cubic feet per annum to its consumers, through its twenty-six and one-half (26½) miles of mains, and about two thousand four hundred (2400) meters. The Peoria Gas Light & Coke Company supplying the remainder of total consumption. Complainant's manufacturing plant is capable of producing the total quantity of gas now used in the city; its distributing system is, however, much too limited to distribute that quantity of gas, and in order to do so it would require an expenditure of more than double the sum it now has invested in that branch of its system. If complainant's plant was supplying all the coal gas now consumed in the city, it would reduce the manufacturing cost to it, two (2) to three (3) cents per thousand cubic feet, but the cost incident to distribution, as between the present amount furnished by complainant, and the total amount consumed, would be relatively increased.

106

22.

The average consumption of gas per annum, per meter, in use in the city of Peoria, is about twenty (20) thousand cubic feet, which is about the average consumption in cities of like size and character of population. And it appears from the evidence that any material increase of gas consumption, will require of complainant an extension of its distributing mains, service connections and meters; the producing capacity of its manufacturing plant being amply sufficient to meet any reasonable expectations in that respect.

23.

The Peoria territory is rapidly increasing in population, and the quantity of gas required to meet the demands of such increase, together with the more general uses for which gas is now sold and required, justifies the policy adopted by complainant when it constructed its manufacturing plant, of so building as to be in a position, as a producer of gas, to meet such additional demands for its product, and it cannot be said that *it* expenditures for such purpose in the construction of its manufacturing plant, involve a useless and unnecessary investment of capital, which should not be considered in determining the present cost to it of producing coal gas.

107

24.

It is insisted by complainant that the unusual hazards which attach to the gas business, such as natural gas, acetylene gas, elec-

tricity, new and improved methods and appliances, unfriendly and ill-advised legislation, increased demand for gas in territory where mains exist, that requires the substitution of new and larger mains for those in use, changing of grades &c. in public highways, which require the lowering of gas mains therein, &c., should also be considered in determining the question of what would be a fair and reasonable rate to be charged for gas supplied for the use of the public. Complainant has voluntarily engaged in the exercise of its charter privileges, and in so doing it assumed all such hazards, and if any, or all of them are encountered by it in the conduct of its business of manufacturing and distributing gas in the city of Peoria, they are in no sense, proper elements to be considered in determining the reasonableness of the maximum rate fixed by the ordinance of September, 4th, 1900.

25.

It appears from the evidence that complainant company is capitalized at two million ($2,000,000) dollars, on no part of which have the holders of its stock ever received any dividends whatever, nor have any been declared by its managing board. The salaries of its officers do not seem to be extravagant, or in excess of the amount usually paid by others engaged in like business enterprises, the vice-president of the company being also its active business manager. Its working capital, comprised of its bills receivable, and cash on hand, is not in excess of the amount required to enable it to take advantage of favorable market prices in the material entering into the production of coal gas. It is not seeking in this case
108 the right to charge for gas a price that will enable it to pay dividends on its capital stock. Its claims are, that the maximum rate fixed by *by* the ordinance here in controversy, is so unreasonably low, as so prevent it from realizing in the manufacture and distribution of gas in the Peoria territory, income therefrom, sufficient to meet the unavoidable depreciation to its manufacturing plant and distributing system, the making from time to time of necessary repairs thereto, and a normal rate of interest on the amount of money now actually invested therein.

26.

At the close of the taking of the evidence in this cause complainant's manufacturing plant and distributing system were in a high state of working efficiency, as regards the economical manufacture and distribution of coal gas; the management of its affairs, skilful and prudent; yet notwithstanding these favoring conditions, it is conclusively shown by a decided weight of the evidence, that the income it would receive from the sale of gas as shown by consumers' meters in use, at the rate of seventy-five (75c.) cents per thousand cubic feet, together with the market value of all residuals produced per ton of coal carbonized, will not yield an income sufficient to

meet the amount of annual depreciation to its plant, the expenses incident to making of necessary repairs thereto, and a normal interest charge on the amount of money invested in such plant.

27.

The ultimate facts disclosed by the evidence, briefly stated, are:

1. Complainant corporation is orgaaized under the general incorporation laws of the State of Illinois, having charter powers to engage in the manufacture and distribution of gas for light,
109 heat and power purposes.

2. It is in lawful occupancy of the public highways in the city of Peoria for the purpose of distributing gas, under the license granted it by the defendant, April 18th, 1899.

3. Complainant's plant is modern, and well adapted for the economical manufacture and distribution of coal gas.

4. The fair market value of complainant's plant at the close of the taking of the evidence, was four hundred and fifty (450) thousand dollars, exclusive of any value its license from the city of Peoria may have.

5. There was no unnecessary expenditure of money in the construction of its plant.

6. It is economically operated.

7. The material and necessary labor required for its operation, are procured at the lowest cash market prices.

8. A normal rate of interest on the capital invested, and depreciation to its manufacturing plant and distributing system are proper charges to be taken into consideration in determining the cost of the manufacture and distribution of gas.

9. Repairs required to maintain the working efficiency of a gas plant, are an additional expense to be considered in arriving at the cost of gas at the place of consumption.

110 10. The defendant, The City of Peoria, on September 4th, 1900, passed an ordinance limiting the maximum price to be charged consumers of gas therein, to the sum of seventy-five (75c.) cents per thousand cubic feet, and required all "gas so furnished to afford a light of not less than eighteen (18) candle power, to be measured and ascertained at the place of consumption."

11. Defendant adopted the above ordinance in good faith, believing the statements and representations previously made, justified the maximum price as therein fixed.

11. It did not avail itself of the opportunity it then had of knowing the reasonableness of the maximum rate fixed by the ordinance in controversy in this cause, or of the cost to complainant of manufacturing and distributing gas.

13. Complainant's license ordinance contains no limitations as to the price at which it shall furnish gas to consumers, nor is there, so far as the record discloses, any ordinance, or contract between complainant and defendant which contains any such regulations.

14. Under the present known methods, the cost to complainant of manufacturing and distributing coal gas in the Peoria territory is in excess of the sum of seventy-five (75c.) cents per thousand cubic feet, the maximum rate fixed by the ordinance adopted by defendant, which said ordinance is now claimed by defendant to be a valid law of the city of Peoria.

111 *Conclusions of Law.*

1.

The court has jurisdiction of this cause, under the allegations of the bill of complainant herein, and the evidence in the case, as involving a Federal question, irrespective of the citizenship of the parties.

2.

In this case the following Federal question is presented:—Does the ordinance adopted by the defendant on September 4th, 1900, in and by which the maximum price to be charged for gas in the city of Peoria, is fixed, violate the provisions of the Constitution of the United States, wherein it provides, that no person shall be deprived of his property without due process of law, and further, that private property shall not be taken for public use without just compensation.

3.

It is an established principle that any law which deprives a person of the right of any substantial benefit in connection with its use, or if in such use, by reason of the operation of such a law, he is not only prevented from receiving a normal interest return upon his investment, but is required to suffer loss in its use, he is in the eyes of the law, deprived of his property, and the fact that it is employed for the public convenience, and whether the person be artificial or real, in no manner affects the application of the rule.

4.

The City of Peoria (defendant) has the right under the laws of the State of Illinois, to pass ordinances regulating the maximum price to be charged for gas furnished by complainant to its citizens, subject, however, to the well established principle, that such
112 ordinances must be reasonable.

5.

The city of Peoria, on the 4th day of September, A. D. 1900, passed an ordinance fixing the maximum rate to be charged for gas furnished by complainant to its citizens, at seventy-five (75c.) cents

per thousand cubic feet, at the place of consumption. To charge a rate in excess of such maximum price, is made punishable by a fine of not less than twenty-five ($25) dollars, nor more than two hundred ($200) dollars for each offense.

6.

The fact being established that complainant cannot manufacture and distribute gas to the citizens of Peoria, at the maximum rate fixed by the ordinance, it then follows that:—

a. The ordinance is void, because by it the city has gone beyond the powers conferred by the laws of the State of Illinois, which confer upon it the power to regulate the price to be charged for gas. It constitutes the exercise of a lawful right in an unreasonable manner: and

b. The enforcement of the ordinance requiring complainant to furnish gas to the citizens of Peoria, at the point of consumption at the maximum price therein fixed, would constitute the taking of private proprety for public use, without just compensation, and in that respect, is in violation of the provisions of the Constitution of the United States.

7.

A court of equity is the proper forum in which to test validity of the ordinance, and is the only one capable of affording complainant relief against the injury following the enforcement of its
113 unjust provisions.

8.

Complainant is a corporation, its existence, its rights and powers, are derived alone from the State of Illinois. Under the State constitution there is reserved to the State the right to prescribe such regulations in the government of corporations, as it may deem advisable.

9.

The State has conferred upon defendant the right, within its corporate boundaries, to lay out streets, to regulate the use of the same, and to grant complainant the right to occupy the same for the purpose of laying its mains and connecting service pipes for the distribution of gas, subject however, to *such regulations*, as it might *by ordinance impose*.

10.

When complainant engaged in the business of manufacturing and distributing gas in the city of Peoria, and under the license granted by defendant on April 18th, 1899, entered upon the public highways for the purpose of distributing gas, it did so with the knowledge that the city had the right to regulate by ordinance, not only the place

and manner it should use its streets, but also to prescribe reasonable prices to be charged its citizens for gas it distributed for their use. The fact that no regulations as to price, were prescribed in complainant's license ordinance, does not preclude defendant from exercising this right after its acceptance by complainant.

114 11.

On this character of public service corporations, the State has not yet attempted to place any limitations as to the price it may charge for the service it may render, it has delegated that privilege to the legislative branch of cities and villages in this State, to which gas companies apply, for the purpose of engaging in the manufacture and distribution of gas.

12.

The fact, (as found) that the defendant has exercised this delegated power unreasonably, and by ordinance has imposed such regulations upon complainant, in the further pursuit of its business affairs, as to compel it either to abandon its business of manufacturing and distributing gas in the city, or to suffer financial loss and injury in continuing it, tends only to establish the invalidity of this ordinance, and the further conclusion that, by its provisions, the agent of the State, (in this case the defendant) has gone beyond the powers conferred upon it by the State, and when it did so, as it has in this instance, and is assuming to act under such ordinance, void though it be, the fact that it is void, will not oust the courts of jurisdiction to restrain the defendant from enforcing its provisions against complainant, nor is the Federal courts thereby deprived of jurisdiction to grant complainant such relief.

13.

A city ordinance, *of* whatever its character may be, is regarded as a law of the State, and the right of the city council, under authority delegated by the State, to regulate by ordinance the maximum price to be charged for gas furnished its citizens, is subject to
115 the same limitations and restrictions imposed upon the legislature, that is, such right must be exercised in a reasonable manner.

14.

Under the pleadings in this case the burden is on the complainant to prove that the maximum rate fixed by the ordinance in question, is an unreasonably low rate, and that the enforcement of its provisions in that respect would be to its injury.

15.

The question of the reasonableness of an ordinance limiting the price to be charged the public, by any person, company or corpora-

tion, engaging in a business impressed with a public interest, and as to whether such limitations are reasonable, or unreasonable, as between the public and a public service corporation, such as complainant, are for judicial not legislative determination,—and this is the law even though such price be fixed directly by the legislature of the State, or by regulations imposed by those whom it has invested with such authority.

16.

The question of the reasonableness of the maximum rate fixed by the ordinance adopted by the city council of the city of Peoria, on September 4th, 1900, is one of fact to be determined by the evidence in this case.

17.

The test of the reasonableness of this ordinance is,—does
116 the rate as therein limited, operate fairly in respect of the rights of the complainant and the public? If it be found to be unjust and unfair, as respects the rights of either, then the law regards it as unreasonable, and relief may be obtained, when such fact is established, either by the complainant, or the public it serves, and the courts of equity are clothed with ample power to afford relief to the one whose rights would be injured through its enforcement.

18.

The evidence in this record shows that the maximum rate fixed by the above ordinance, is so unreasonably low, as to require complainant to furnish gas to the citizens of Peoria, at a price below the cost of manufacturing and distributing it. The enforcement of it would constitute a taking of its property for public use without just compensation; this is prohibited by the fourteenth (14th) amendment to the Federal Constitution.

19.

In the absence of any ordinance regulations, or restrictions, complainant being engaged in a business impressed with a public interest it is its duty under the law to charge the citizens of Peoria, no more than fair and reasonable prices for gas it manufactures and distributes to supply their demand; but this does not give defendant the right, under the pretense of regulating such price by ordinance, to fix the price so low, as to work a confiscation of complainant's property, necessarily employed in such public service.

20.

The threatened enforcement of this ordinance against complainant, by prosecution under its penal provisions, and the multiplicity of suits that would necessarily follow, and the injury complainant

would suffer in either defending against such prosecutions, or complying with the provisions of the ordinance,—there can be no
117 doubt of the power of a court of equity to grant it relief.

21.

In granting relief against the enforcement of the provisions of an unreasonable ordinance, a power which courts of equity undoubtedly possess, the court will not assume to fix rates. This province belongs to the legislative branch of government, to be exercised by the State, or by those under it to whom it has delegated such authority. The judicial branch of government has, however, the power to determine the reasonableness of such rates, when called in question by those effected thereby, whether the same be fixed by the legislature of the State, or the city council of cities to whom such authority may be delegated.

22.

The defendant having the right under the law of the State of Illinois, to pass ordinances regulating in a reasonable manner, the prices to be charged its citizens for gas furnished them by complainant has equally the right to prescribe penalties to compel observance of such regulations; and if the ordinance here in controversy, was not, for the reasons before given, void, the penalties as therein prescribed would not impair its validity.

23.

Under the facts as found, the estoppel set up by the defendant cannot be sustained. If the rate fixed by the ordinance of September 4th, 1900, had been prescribed in the original license to complainant, a question much more difficult to a correct decision in that regard, would be presented.

118 24.

The uniform doctrine of estoppel *in pais*, has been so frequently announced by the Federal and State courts, that it may be now said to be definitely settled. The one particularly applicable in this case is, that the defendant at the time it had under consideration the ordinance fixing the maximum rate to be charged for gas, was not only without knowledge, as to whether the rate fixed was a fair, just, and reasonable one, but it also had no convenient, or ready means of acquiring such knowledge.

25.

The conclusions of the special master are, that the ordinance in controversy in this case is unreasonable in respect to the price as therein fixed; that the enforcement of its provisions against com-

plainant. would constitute the taking of the property of complainant without due process of law, and in the taking of private property for public use without just compensation; that the ordinance being void, because it is unreasonable, the enforcement of it against complainant should be restrained by the court, and to that end, an injunction should be allowed, perpetually enjoining the defendant, its officers and agents from enforcing, or attempting to enforce, the provisions thereof against complainant, as prayed in and by its bill herein.

Peoria, Ill., May 2nd, 1903.

ISRAEL C. PINKNEY,
Special Master in Chancery in said Cause.

Endorse-: "Filed June 3, 1903. Marshall E. Sampsell, clerk."

119 And afterwards on to-wit the eighth day of June, A. D. 1903, there was filed in the office of the clerk of said court in said cause, a motion to fix compensation of master, which said motion is in the words and figures following, to-wit:

120 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY, Complainant,
vs.
CITY OF PEORIA, Defendant.
} In Chancery.

Comes now the undersigned special master in said above entitled cause under order of court made and entered herein, on to-wit the 20th day of May, 1901, and moves the court that his compensation as said special master herein, for making his report of his conclusions of fact and law, as by said order of reference is required, be fixed and determined by this honorable court.

ISRAEL C. PINKNEY,
Special Master in said Above Entitled Cause.

Endorsed: "Filed June 8, 1903. Marshall E. Sampsell, clerk."

121 And afterwards, to-wit on the eighth day of June, A. D. 1903, the same being one of the regular days of the regular April A. D. 1903 term of said court, among others, further proceedings were had in said cause and entered of record in the words and figures following, to-wit:—

122 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

MONDAY, *June 8th, A. D.* 1903.

By direction of Hon. J. Otis Humphrey, district judge presiding by assignment.

PEORIA GAS AND ELECTRIC COMPANY
vs.
CITY OF PEORIA. } 288.

Now on this day this cause coming on to be further heard upon the motion of the special master herein to the court to determine and fix the compensation of such special master for making his report herein, as by said order of reference he is required, and the court having examined said report, of said special master, and the witnesses produced, touching the question of the compensation to be allowed to such special master in that behalf, and being now fully advised in the premises, doth hereby fix and order that such special master be allowed for said services the sum of one thousand dollars. The said sum so allowed is hereby ordered to be paid in equal proportions by the parties to said above entitled cause to the said special master, within thirty days from this date.

It is further ordered that the amount so directed to be paid to the said special master by the respective parties to this cause abide the final order and judgment of the court in relation to the costs to be taxed herein.

123 And afterwards, to-wit on the first day of July A. D. 1903, the same being one of the regular days of the regular April A. D. 1903 term of said court, among others, further proceedings were had in said cause and entered of record in the words and figures following, to-wit:—

124 Circuit Court of the United States, Northern District of Illinois, Southern Division.

WEDNESDAY, *July 1st, A. D.* 1903.

By direction of Hon. J. Otis Humphrey, judge by assignment.

PEORIA GAS AND ELECTRIC COMPANY
vs.
CITY OF PEORIA. } 288.

Upon motion of the defendant it is ordered by the court that the time to file exceptions to the report of the special master herein, be and the same is hereby extended five days.

125 And afterwards on to-wit the first day of July, A. D. 1903, there was filed in the office of the clerk of said court in said cause, exceptions of complainant to master's report, which said exceptions are in the words and figures following, to-wit:

126 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS AND ELECTRIC COMPANY
vs.
CITY OF PEORIA.
} In Chancery. For Injunction, etc.

Exceptions by Complainant to Master's Report.

Now comes The Peoria Gas and Electric Company, the complainant herein, and excepts to the findings of fact and conclusions of law as set forth in the report filed herein of the special master in chancery to whom this cause was referred to take proofs, in the following particulars, to-wit:

First.

Said master erred in his failure and refusal to hold in paragraph 10 of the findings of fact that whatever representations were made by the stockholders, prior to the granting of the franchise ordinance of April 18th, 1899, were merged in the ordinance contract, and that said ordinance having fixed no limitation on the price to be charged for gas, constituted a contract between the city and complainant that the latter would furnish gas at a reasonable price, and that the ordinance of September 4th, 1900, must be measured by the contract of April 18th 1899, to furnish gas at a reasonable prices; and that in connection with said ordinance of September 4th, 1900, there is no presumption that the price therein fixed was reasonable, in view of the fact that the city council did not then have knowledge of the necessary facts relating to the cost of the manufacture and distribution of gas.

127 Second.

Said master erred in his failure and refusal to hold that the allowance for depreciation of the manufacturing coal gas plant to be taken into consideration in determining the cost of gas, under the evidence in this case, should be at least six per cent. (6%) per annum on the total cost of said plant, exclusive of real estate; that such allowance for depreciation should have been found and held by the master as proper, under the evidence of the following witnesses:

F. W. Little, (Record p. 24, Abst. p. 36) testified as follows:—"Taking into consideration the destructive agencies concerning which I have testified, the annual depreciation of the gas plant of the char-

acter and location of the complainant plant would be about six and half per cent. (6½ %), and in my opinion the annual depreciation of the complainant plant in the city of Peoria is about six and a half per cent. (6½ %) of the cost of the propery."

E. G. Pratt, (Rec. p. 350, Abst. p. 196) testified as follows:—"I have made a great deal of investigation and study of the question of depreciation, and I believe that seven per cent. (7 %) on the cost of the manufacturing plant, mains, services, meters (everything excepting real estate) is a proper percentage to be charged off annually on a gas plant like that of complainant company."

H. W. Brown, (Rec. p. 431, Abst. p. 220–221) testified as follows:—"From my experience I am of the opinion that the average annual depreciation of a gas plant, taken as a whole, is from 6 to seven per cent. (6 to 7 %) upon the entire cost of the plant, counting in the cost of everything, from the coal pile to the cash box, but not including real estate."

David Douglas, (Rec. p. 472, Abst. p. 241) testified as follows:—"I am of the opinion that six per cent. (6 %) per annum would be a fair estimate of the amount of money that would be required to set aside from year to year to cover depreciation, said percentage to be estimated upon the entire cost of the plant, leaving out real estate and brick tanks."

128 K. N. Mitchell, (Rec. p. 512, Abst. p. 258) testified as follows:—"This depreciation should be taken into account and covered by a certain sum set aside annually; that sum should be six per cent. (6 %) upon the entire cost of the gas plant, such as the plant of the complainant company. This amount should be computed annual-y upon the total cost of the plant, exclusive of real estate."

I. N. Knapp, (Rec. p. 567, Abst. p. 281) testified as follows:—"The sinking fund which I testified should be laid aside to cover depreciation and renewal is certainly a proper element to be taken into consideration in determining the cost at which gas can be furnished to consumers. I think such sinking fund should not be less than six per cent. (6 %) per annum of the entire cost of the plant, exclusive of real estate."

Third.

Said master erred in his failure and refusal to hold that as a part of the first cost to complainant in the manufacture and distribution of coal gas in the city of Peoria, should be included interest at the rate of ten per cent. (10 %) per annum on the cost (the same not being in excess of its present market value) of the manufacturing plant and distributing system, in view of the hazards of the business, as testified by various witnesses, as follows:—

F. W. Little testified (Rec. p. 24, Abst. p. 36) as follows:—"Taking into consideration the hazards of the business on account of new improvements and competition, concerning which I have testified, in my opinion ten per cent. (10 %) per annum on the cost of the prop-

erty would be a fair return to investors in a gas business enterprise; I mean ten per cent. (10 %) of the construction value of the property, whatever it may be at any time."

E. G. Cowdery testified (Rec. p. 268, Abst. p. 141) as follows:—"From my experience and observation in the management and investigation of gas plants, I think investors in gas properties
129 are entitled to ten per cent. (10 %) on their money invested, taking into consideration hazards of the business aside from depreciation."

J. H. Eustis testified (Rec. p. 305, Abst. p. 165) as follows:—"In my judgment, ten per cent. (10%) annually would be a fair return on the investment in such properties. Ten per cent. (10%) would be a fair return on the total investment in the gas property."

Edward G. Pratt testified (Rec. p. 352, Abst. p. 196) as follows:—"Apart from the question of depreciation, and taking into consideration the hazards of the business from an investor's standpoint, I believe that the gas business should pay from ten to twelve per cent. (10 to 12%) per annum as interest or dividend upon the entire investment, as a reasonable and fair return to investors in such properties."

Harvey W. Brown testified (Rec. p. 435, Abst. p. 224) as follows:—"Referring to what would be a fair and reasonable return to investors upon the cost of a gas plant, taking into consideration the hazards of the investment from an investor's standpoint, I would say that I do not know of any manufacturing business that would be willing to work on a less basis than ten per cent. (10%) I should not want to own any gas property that would not return me at least ten per cent. (10%)."

A. P. Lathrop testified (Rec. p. 502, Abst. p. 225) as follows:—"In my opinion a gas company should be entitled to as large an earning power as any other manufacturing business, and I doubt if anybody would want to engage in any manufacturing business that pays less than ten per cent. (10%). I should say that at least ten per cent. (10%) ought to be expected from a gas property as a return on the investment. This is entirely separate from depreciation account and should be earned after proper deduction for depreciation."

K. N. Mitchell testified (Rec. p. 514, Abst. p. 259):—"I am of the opinion that ten per cent. (10%) per annum would be a fair and reasonable return to investors upon the cost of the plant, taking into consideration the hazards of the business."

130 Leonard Kellogg testified (Rec. p. 537, Abst. p. 267) as follows:—"Among the hazards of the gas business are explosions, person injury, competition by other plants and other systems of lighting, such as electricity, new inventions that make old apparatus worthless, political agitation influencing State and city legislation, etc. These hazards are distinct and separate and apart from depreciation. In my opinion ten per cent. (10%) is a fair and reasonable return upon the cost of a gas plant from the standpoint of an investor, taking into consideration the hazards of the business.

This is in addition to the five per cent. (5%) charged off annually for depreciation."

I. N. Knapp testified (Rec. p. 568, Abst. p. 282) as follows:—"I am of the opinion that not less than ten per cent. (10%) on the total investment, including the real estate, should be derived from a gas plant as a reasonable and fair return to investors."

H. L. Doherty testified (Rec. p. 621, Abst. p. 302) as follows:—"I certainly would not want to put my money into any kind of a quasi-public corporation unless I thought I would make twelve per cent. (12%) on it, if at the same time I could get five or six per cent. (5 or 6%) on mortgages. * * * I would assume that the hazards which any investor must expect on putting his money into a quasi-public corporation are such that he should have at least a double return on his money as compared with a loan on real estate, and in this estimate I exclude the five per cent. (5%) for depreciation."

Fourth.

Said master erred in findings as follows:

"Complainant's manufacturing plant is capable of producing the total quantity of gas now used in the city," and in his failure to find that complainant's manufacturing plant in its present condition is not sufficiently large to enable it definitely, or for any considerable period of time, to manufacture all the gas used in the city of Peoria at the present time.

131 Mr. F. W. Little testified (Rec. p. 2041–2, Abst. p. 840–841) as follows:—"The plant of the Peoria Gas and Electric Company in its present condition is not large enough to make that quantity (the amount it had been making for the previous ten months) of gas indefinitely. It would not be feasible to continue to manufacture that volume of gas in that plant, for the reason that the working capacity of the retort house is about 600,000 cubic feet a day, the maximum being 636,000 feet a day when all the benches are in good condition. Under the contract referred to, last winter, we were compelled to make 680,000 feet per day and it strained the plant; the condensing plant was also forced beyond its capacity, as it was designed, as shown in my testimony, originally as a 500,000 foot plant, and the gas could only be made and furnished while the plant was new and before it became necessary to let down any of the benches for refilling or maintaining extensive repairs. It would require at least three additional benches of nine retorts each, with a house to cover them; an additional air condenser; an additional P. & A. tar extractor; one Chollar washer; two more scrubbers and probably one more purifier. This apparatus would cost, including the foundations, with the necessary building for housing the retorts, somewhere from $40,000.00 to $50,000.00 to enable our plant to furnish continuously the volume of gas manufactured by it during the ten months' period of the contract with the Peoria Gas Light and Coke Company.

Fifth.

Said master erred in his findings that "Complainant has voluntarily engaged in the exercise of its charter privileges, and in so doing it assumed all such hazards, and if any or all of them are encountered by it in the conduct of its business of manufacturing and distributing gas in the city of Peoria, they are in no sense proper elements to be considered in determining the reasonableness of the maximum rate fixed by the ordinance of September 4th, 1900;"

131½ and in his failure and refusal to find that on account of such hazards it should be allowed a larger rate of interest on its investment than prevails in those lines of business where such hazards do not exist, and that such hazards are to be considered in determining the rate of interest to be allowed as a part of the proper cost of gas in determining the reasonableness of the maximum rate fixed by the ordinance of September 4th, 1900.

F. W. Little (Rec. p. 25, Abst. p. 36) enumerated as hazards, natural gas, the by-product oven process, and further on (Rec. p. 769 to 771, Abst. p. 117–118), testified as follows:—"The hazards of the gas business is greatly increased by the action, often ill-advised and hastily considered, of legislatures and city councils. The business is subject to the imposition of restrictive conditions, which, in my opinion, are not often in the interests of the gas company or the public. In this connection I will refer to an ordinance which was vetoed not long since by the mayor of the city of Peoria, which ordinance permitted the gas company to lay mains and supply customers in the southwestern portion of the city, and which, had it become a law, would have added to the consumption of gas, and increased the gross earnings of the company. The ordinance at issue in this suit is another illustration in point, not only with reference to the price, but with reference to the provisions relating to the furnishing of gas at a uniform 18 candle power at the point of consumption.

"Since the ordinance authorizing the complainant company to do business in Peoria, was passed, a like ordinance and license was granted to one Charles V. Newman; the effect of such ordinances is to arouse discontent in the minds of consumers and to create an impression that by waiting possibly lower prices can be obtained, thus retarding the development of the business.

"Other hazards are changes of grades, improved changes in methods of lighting, the invention of burners better adapted for the use of coal oil, and more economical lamps and apparatus for electricity."

132 (The Newman ordinance above referred to is "Exhibit 14" attached at the end of the third volume of evidence.)

E. G. Cowdery testified (Rec. p. 268, Abst. p. 141) as follows:—"The general hazards to gas business are the conditions that exist, so far as competition may effect the business, the constantly new and improved things that are arising in connection with the busi-

ness, which may, at any time, amount to a considerable cost and loss to the company; the instability of the business generally, on account of the interference by legislative bodies, etc. Electric light is also a competitor and is a constant hazard; and natural gas very greatly enters into it in districts where natural gas exists or is likely to be found."

J. H. Eustis testified (Rec. p. 305–306, Abst. p. 165) as follows:—"Aside from general depreciation, there are hazards in the gas business. In the first place, electricity enters into competition, which gas companies have to meet very largely. There are other matters that I might add which enter into its hazards and that is the fact that there is continually going on improvements in the machinery and apparatus for the manufacture of gas. What I mean by improvements is that they must necessarily affect the economical production of gas, and companies equipped with old style apparatus, in order to meet this competition, must necessarily adopt the new machinery, which of course, involves large expense and a waste of money invested in other apparatus."

E. G. Pratt testified (Rec. p. 351, Abst. p. 196) as follows:—"Referring to the hazards of the gas company from the standpoint of an investor, I would say that gas is a dangerous substance, and in its use there are many opportunities for destructive results, by reason of leakage, causing asphyxiation or explosions, not only in the premises of consumers but in and about the manufacturing plant of the company, it being impracticable always to employ men around the works of the highest ability and judgment. Then there is the question of competition with electricity, kerosene, isolated plants in the shape of gasoline generators, acetylene, then the danger from electrolysis, and then the danger which to my mind is more
133 important than any other to-wit, the fact that all corporations are subject to the whims of legislative bodies in States and cities where they are doing business."

H. W. Brown testified (Rec. p. 433, Abst. p. 222) as follows:—"Referring to the hazards of the business from the standpoint of an investor, as distinguished from depreciation, one is an indiscreet city council granting an opposition franchise, and it is a very great hazard too. For illustration take Peoria. There was an old gas company in operation there when complainant company obtained its license. It practically duplicated the plant of the old company, and divided its business. The hazard of such a course to the old company is apparent and such hazard is encountered by every gas company. Moreover, if a merchant goes into business and meets with ruinous competition, he may take his good- to another town and his goods are valuable and he loses nothing but the expense of removal. You cannot take up a gas company however, and move to another town; you either live or die there, and you are ruined either absolutely, totally or partially, as the case may be."

And on Record p. 434, Abst. p. 223, this witness mentions com-

peting lights, kerosene, acetylene, electricity, natural gas, the possibility of explosions, etc., as continuing hazards.

David Douglas, after describing the elements tending to depreciation, testified (Rec. p. 475, Abst. p. 243) as follows:—"Among the hazards of the business I may mention the competition of electric light, the introduction of acetylene gas, the improved electric lamps devised or which may be devised; the natural gas found in certain sections of the country, and competition from other forms of lighting or from other franchises which may be given to other companies, where the gas company has not an exclusive franchise."

A. P. Lathrop testified (Rec. p. 501, Abst. p. 254) as follows:—"Among the hazards of the gas business may be mentioned competition from any other gas company, competition from electricity or gasoline, or any new form of lighting or improvements in kero-
134 sene lighting lamps, etc. Moreover, the business of a gas company is local and confined to one market, which may have its special hazards. In case of disasterous competition, it cannot go to another market and take its goods with it, and in case of disaster its property has only junk value. The fact that a gas company is local makes it peculiarly subservient to local authorities, which to-day constitute a serious menace."

K. N. Mitchell testified (Rec. p. 515, Abst. p. 259):—"Among the hazards of the gas business are explosions, competition from natural gas, legislative agitation by city councils and county courts, competition from electricity, coal oil and new inventions."

Leonard Kellogg testified (Rec. p. 537 Abst. p. 267):—"Among the hazards of the gas business are explosions, personal injury, competition by other plants and other systems of lighting, such as electricity, new inventions that make old apparatus worthless, political agitation influencing State and city legislation, etc. These hazards are distinct and separate and apart from depreciation."

I. N. Knapp testified (Rec. p. 567–8, Abst. p. 281) as follows:—"Among the hazards of the business I may mention a man letting the heat run too high and melting down part of the benches, the danger of losing your seal and allowing the gas to escape in the works, causing an explosion; when you come to the holder, there is an element of danger from tornadoes; there is electrolysis, which is a double hazard, in that it often produces leakage, which may lead to explosion or asphyxiation in houses; then there is the change of grade in streets, damage caused by sewer extensions, personal injury suits, newspaper and political agitation, new inventions, the competition of electric light, oil, with improved methods of burning the same, natural gas hazards, etc.; also the granting of franchises to competing gas companies, and the fact that you cannot remove your investment from one city to another, all of which elements must be taken into consideration when comparing this investment with other forms of investment."

135 H. L. Doherty testified (Rec. pp. 595–597, Abst. pp. 294–5) as follows:—"The most serious hazard to a gas company is

municipal and legislative attack upon all plants of quasi-public corporations; the second hazard is the antiquation of the property by some form of competition. The use of acetylene gas threatens serious competition; the recent development of the incandescent oil burners is even more serious. Natural gas has entirely displaced the use of artificial gas in some localities and rendered the entire investment of an artificial gas plant worthless except for junk. Explosions and accidents generally cost a lot of money, and the gas company must be prepared to take care of them. Accidents are not at all infrequent."

Donald McDonald (Rec. p. 643, Abst. p. 312) testified as follows:—"One of the serious hazards of the gas business is the likelihood of explosions and asphyxiation. A large portion of the investment may be wiped out by explosion. A change in the methods of manufacturing gas is another hazard which may make a whole plant useless. Constant discovery of new methods of lighting and heating may make your product unsalable, even though your plant be still in good order. Natural gas is always a serious hazard, and I may also mention the granting of franchises to other companies, giving rise to severe competition and the destruction of profits, even if the company itself survives."

Sixth.

Said master erred in finding in his report that "It appears from the evidence that complainant company is capitalized at $2,000,000.00," said finding being unnecessary and not involved in the case, as no claim is made by complainant for dividends on the stock or a return upon the capital of complainant outside of a fair rate of interest on the amount actually invested in the gas property.

This appears from "Exhibit 2"—Statement of the cost of complainant's plant at the beginning of the suit, which appears at the foot of volume 1 of complainant's testimony; also "Exhibit
136 48" (Rec. p. 2095) showing the cost of the plant at the time of closing the evidence in the case.

If it be necessary to make any finding in regard to the capitalization of the company, then the master erred in his failure and refusal to find that said capital also covered a large and extensive electric lighting plant and system for the public and private lighting of the city of Peoria, and also an extensive steam heating plant for the heating of public and private buildings in said city of Peoria in addition to the amount invested in the gas plant of the complainant company, the evidence on that point being as follows:—

F. W. Little testified (Rec. p. 193, Abst. p. 84):—"The complainant company has a large electrical plant situated in another block, some distance from the gas plant. It is in nowise connected with the gas plant. It is operated as an entirely different business from the gas business, merging only in the office of the company."

Also (Rec. p. 212, Abst. p. 91):—"The company owns the real

estate where the electric light plant is located at the foot of Liberty street."

(Rec. p. 218:)—"The complainant company purchased the electric light plant about the month of February 1901."

Also, when called as witness for the defendant, Mr. Little testified (Rec. p. 1628, Abst. p. 676):—"I participated in increasing the capital stock of the complainant company. I know the reasons for increasing the stock. It was primarily for obtaining the electric light plant. We acquired the electric light plant in February 1901. The Peoria Gas and Electric Company bought the property of the Peoria General Electric Company. The purchase was made by the company and was authorized by the stockholders of the Peoria Gas and Electric Company. The complainant company prior thereto had been in the electric business in a small way."

Seventh.

Said master erred in his failure and refusal to find that a proper rate of interest on the capital invested, taking into consideration the hazards of the business, is a proper charge to be taken into
137 consideration in determining the cost of the manufacture and distribution of gas, for the reasons and under the evidence more specifically set forth under the third and fifth exceptions above.

Eighth.

Said master erred in his finding that "defendant adopted the above ordinance in good faith, believing the statements and representations previously made justified the maximum price as therein fixed," said finding being unsupported by any evidence in the case.

Ninth.

Said master erred in admitting and considering in his findings of fact in his said report, incompetent, irrelevant and immaterial evidence offered on the part of defendant against the objection of this complainant, and this complainant says that the findings of the master in the particular matters above mentioned, and in each and every one of them, are contrary to the greater weight of the evidence in this case, in all of which particulars aforesaid the complainant objects and excepts to the said report of the said special master and submits that the same ought to be varied and altered accordingly.

Conclusions of Law.

Complainant objects and excepts to the conclusions of law found and reported by said special master in the following respects, to-wit:—

138

First.

Said master erred in his conclusions of law as the same are recited and set forth in paragraph 4 of his said report, because complainant says that under the pleadings and evidence in this case the decision of the point involved in said paragraph 4 was not necessary nor material to a decision in the case; nor in the said finding of the master in conformity with the law, inasmuch as no power has been delegated by the legislature to municipalities to fix the price at which gas may be sold.

Second.

Said master erred in his conclusions of law, as the same are recited and set forth in paragraph 11 of his said report, because complainant says that under the pleadings and evidence in this case that question is not involved, and the ruling therein is unnecessary to a proper decision of the issues in this case; nor is the said finding of the master in conformity with the law, inasmuch as no power has been delegated by the legislature to municipalities to fix the price at which gas may be sold.

Third.

Said master erred in his conclusions of law, as the same are recited and set forth in paragraph 19 of his said report, because complainant says that there is a further limitation upon the right of the defendant to pass an ordinance fixing the maximum rate for gas which is, that the rate established shall not be so low as to require the company to suffer financial loss in the use of its property or to deprive it of the right of any substantial benefit in connection therewith.

Fourth.

Said master erred in his conclusions of law, as the same are recited and set forth in paragraph 22 of his report, because complain-
ant says that under the pleadings and evidence in this case
139 that question was not at issue and is unnecessary to a decision of the case; nor is the said finding of the master in conformity with the law, inasmuch as no power has been delegated by the legislature to municipalities to fix the price at which gas may be sold.

Fifth.

Said master erred in his conclusions of law, in all places set forth and recited in his report wherein he finds that the city of Peoria has the right under the laws of the State of Illinois to pass ordinances fixing the maximum price to be charged for gas furnished by complainant to its citizens, because complainant says that such finding

is on an issue not involved in this case nor raised by the pleadings. The bill alleged that said ordinance was void—

1st. Because the price fixed therein was fixed arbitrarily, without any investigation or inquiry.

2nd. That the rate fixed was unreasonably low, and that its enforcement would have the effect to deprive complainant of its property without due process of law; to take private property for public use without compensation, and to deny it the equal protection of the law, contrary to the provisions of the Federal Constitution; that said ordinance was further unreasonable and invalid in that it imposed obligations upon the complainant in reference to the candle power of gas with which it was not practical or feasible to comply.

3rd. That said ordinance was invalid as impairing the rights of the contract between the company and the city of Peoria.

4th. That the city, notwithstanding the fact that the ordinance lacked all requisites of validity, was proposing to enforce the same, and unless restrained by injunction would enforce it, and bring irreparable injury and loss to complainant.

140 Wherefore, the above named complainant also objects to the conclusions of law as reported and found by said special master, and submits that the same ought to be varied and altered accordingly.

Respectfully submitted,

W. T. IRWIN,
E. C. RITSHER,
W. T. ABBOTT,
Solicitors for Complainant.

Endorsed: "Filed July 1, 1903. Marshall E. Sampsell, clerk."

141 And afterwards, to-wit on the sixth day of July A. D. 1903, the same being one of the regular days of the regular April A. D. 1903 term of said court, among others, further proceedings were had in said cause and entered of record in the words and figures following, to-wit:—

142 Circuit Court of the United States, Northern District of Illinois, Southern Division.

MONDAY, *July 6th, A. D.* 1903.

By direction of Hon. J. Otis Humphrey, judge, presiding by assignment.

PEORIA GAS AND ELECTRIC COMPANY
vs. } 288.
CITY OF PEORIA.

Upon motion of the defendant it is ordered by the court that the time to file exceptions to the report of the special master herein, be

and the same is hereby extended to the first day of August A. D. 1903.

It is further ordered by the court that the hearing of exceptions to the report of the special master herein be set for September first A. D. 1903.

143 And afterwards on to-wit the thirteenth day of July A. D. 1903, there was filed in the office of the clerk of said court in said cause, the defendant's exceptions to findings of master, which said exceptions are in the words and figures following, to-wit:—

141 Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY, Complainant,	)	In Chancery.
vs.	)	For Injunction.
CITY OF PEORIA, Defendant.	)	

Comes now the defendant, The City of Peoria and excepts to the finding of facts and conclusions of law filed herein by I. C. Pinkney, special master herein, in the following particulars, to-wit:

1.

That while the master in his ninth finding of fact found, "at the time complainant company presented its application to the city council for a license to construct its plant, and occupy the public highways of the city, for the purpose of distributing gas to its citizens, and for many years prior thereto substantially the same territory of the city, complainant is by its ordinance authorized to occupy, the Peoria Gas Light & Coke Company were in possession of, and actively engaged in, the same business, and until complainant had completed and put in operation its plant, the Peoria Gas Light & Coke Company held an unmolested field therein for the sale of gas." Yet the master failed to find that the manufactory and distribution system of the Peoria Gas Light & Coke Company was at all times since its installation of sufficient magnitude to meet the demands of the locality, and that following the growth of population, business and industrial enterprises, and increase of territory available for gas service, the Peoria Gas Light & Coke Company extended its mains correspondingly, and added to its manufacturing equipment and facilities continuously to such an extent as to keep pace with demands, within a reasonable time occupying all new districts where service would result in profit, or where such
145 results might fairly be expected in the near future, and that its system was of ample capacity and fully equipped to furnish the entire Peoria district with gas of good quality and candle power to meet maximum demands, and was never required to shut

down its plant for any period of time, for the purpose of making repairs; and at the time complainant company applied to the city authorities for a license to install its system and operate in the Peoria territory no demand or necessity for another company in the same field existed.

2.

That while the master in his ninth finding — fact found that, "up to the year 1897, and from time to time prior thereto, this last named company, (Peoria Gas Light & Coke Company) had reduced the price of gas to consumers, and on or about the first of the year 1897 its prices were, for illuminating gas $1.35 gross or $1.25 net per thousand cubic feet, if paid on or before the 10th day of the month next following, and $.75 per thousand cubic feet for fuel gas. These prices continued up to April 1, 1899, at which date the price charged by it for gas used for illuminating purposes was reduced to $1 net per thousand cubic feet." Yet the master failed to find that such reduction in the price of gas by the Peoria Gas Light & Coke Company was voluntary on its part, and that at the time complainant company applied to the city council of the city of Peoria, to-wit, on or about the 1st of April 1899, the Peoria Gas Light & Coke Company was selling about one half of its output for $1 per thousand cubic feet and the other half at $.75 per thousand cubic feet, or at an average price for all purposes of 87–½ cents per thousand cubic feet.

146

3.

That while the master in his ninth finding of fact found that, "in April, 1900, a further reduction was made, the price being $.30 net per thousand cubic feet for all gas used for either light or fuel purposes," yet the master failed to find that during the period of time when the price charged for all gas delivered in the Peoria district was $.30 per thousand cubic feet the stock of the Peoria Gas Light & Coke Company sold for 436 per cent. of its par value.

4.

That, while the master in his tenth finding of fact found, "it does not appear, however, that any corporate action taken at any time by complainant authorized such statements and representations, nor does it appear that in any such statements or representations *any* fixed price at which complainant would furnish gas to consumers was stated; the substance of them being that, 'the price being cheapened.'" Yet such finding is erroneous, in so much as it is contrary to the law and the evidence.

5.

That while the master in his twenty-seventh finding, subdivision eleven, found that, "defendant adopted the above ordinance" (maximum rate ordinance passed September 4, 1900) in good faith, be-

lieving the statements and representations previously made justified the maximum price as therein fixed, yet the master failed to find that the statements and representations made by complainant company through its stockholders and duly authorized agents to the members of the city council and public generally, that the rates charged for gas by the Peoria Gas Light & Coke Company were excessive and extortionate, and that gas could profitably be furnished to the city and citizens generally, at greatly reduced rates, were made with full knowledge of all material and pertinent facts touching the subject matter, and for the express purpose of inducing the members of the city council to pass the ordinance granting to complainant company the right to construct and operate a gas manufactory and distribution system in Peoria, and that such representations further stated and represented to the city authorities that the only method by which relief could be obtained from the exorbitant exactions of said old company in the matter of gas rates, was by granting to complainant a license to enter into competition with said Peoria Gas Light & Coke Company in supplying gas, and that from such statements and representations so made to the members of the city council, verbally and in writing, they were justified in believing, and did believe, that the granting of the license asked by said complainant would result in its furnishing gas of proper candle power and good quality to the city and citizens at not exceeding seventy-five cents per thousand cubic feet, and that such rate was a fair and reasonable one, and that it could supply gas profitably at such rate; that the statements and representations of all the stockholders of record of complainant company furnished the initiative for the passage of the maximum rate ordinance of September 4, 1900; that through this channel the council was advised of what was a proper rate to be charged for gas in Peoria, and the information thus given by complainant company, through its duly authorized representatives, fully justified the council's action in fixing a rate at not exceeding seventy-five cents per thousand cubic feet.

147

6.

That while the master in his eleventh finding of fact found that "the ordinance in controversy in this case was not passed by the common council of the city of Peoria for about eighteen months after the time that complainant procured its original license from the city. At the time the ordinance fixing the maximum price of gas was pending, and before its adoption by the city council, it appears complainant, through one of its officers, stated to the mayor of Peoria and to some of the members of the city council, that gas could not be made by it, at the maximum price fixed by this ordinance, and the mayor was then requested, either personally, or through any representative of the city he might select, to make an examination of the books of complainant, to determine for the guidance of the council, what it was then costing complainant to manufacture gas, and

148

what would be the probable cost in the future. There is no evidence in the record in this case showing, or attempting to show, that the defendant ever sought the opportunity, or privilege of making any investigation of complainant's books, that had been offered it for the express purpose of guiding its legislative body in fixing, in the ordinance it then had under consideration, reasonable and fair rates, to be charged for gas in the city, nor is there one word of testimony in denial that such an opportunity was tendered it by complainant, nor is there any evidence that defendant had knowledge on this subject from any other source." Yet such finding is erroneous and contrary to law, for the reason that the statements and representations of all the stockholders of record of complainant company, of date April 18, 1899, characterizing the rates charged by the Peoria Gas Light & Coke Company as extortionate and unjust, relieved the city council of whatever obligation the law, under other circumstances, might have cast upon its members to make investigation as to the reasonableness of the rate proposed to be incorporated in the maximum rate ordinance, passed September 4, 1900. By those statements and representations the city council had been advised long in advance of action, limiting the price to be charged to what was a fair and reasonable rate, no changes material in this proceeding, from April 18, 1899, to September 4, 1900, had made the furnishing of gas more costly to the companies operating in Peoria.

7.

Defendant excepts to the refusal of the master to find the following facts requested by defendant: "That during the pendency before the city council of its franchise ordinance, the duly authorized representatives of complainant company falsely and fraudulently represented to the city council and public generally, that
149 Peoria people alone were interested in the proposed new industry; that such representations had weight and significance in securing the passage of the ordinance."

8.

Defendant excepts to the refusal of the master to find the following facts requested by defendant:

"That the representations and admissions made by all the stockholders of record of complainant company and its duly authorized agents, at the time the franchise ordinance was pending before the city council of said city, estopped the complainant company from afterward denying the fact that gas could be manufactured and sold at seventy-five cents per thousand cubic feet in the city of Peoria, and a reasonable return made on the money invested at that price."

9.

Defendant excepts to the master's twelfth finding of facts that, "the license granted by the defendant, The City of Peoria, on April

18, 1899, contains no requirements as to the candle power of gas to be furnished by complainant. Neither is it practicable under the present method of conveying gas from the place of manufacture to the point of consumption, to maintain eighteen (18) candle illuminating power at all points of consumption, without the excessive use of enrichers in its manufacture. Where this is attempted by the producer, it results in discomfiture to the consumer by smoking when ignited, and the giving off of unpleasant odors," for the reason that it is erroneous and contrary to the evidence.

10.

Defendant excepts to the fourteenth finding of the master that, "the depreciation of a manufacturing coal gas plant, under the evidence in this case, may be conservatively found to be five (5%) per cent. per annum on the first cost. Some parts of the plant, particularly the retort ovens, depreciate very rapidly; they become
150 burnt out and unfit for further service after two years. These retorts are a necessary part of a plant, under the present known methods of the manufacture of coal gas. They are expensive to install and more expensive to replace," for the reason that such finding is erroneous and misleading, and contrary to the greater weight of the evidence in this case.

11.

Defendant excepts to the fifteenth finding of facts of the master that "the depreciation to the distributing system of complainant's plant is largely due to natural conditions, found to exist in the soil where its mains and service connections are laid. These destructive agencies are found to a greater or less extent in the soils of all cities and vary according to the character of the soil. Complainant's mains are of cast-iron, its service connections of lead, each vary in thickness in proportion to size. By reason of these soil conditions the lead pipe depreciates much more rapidly than the cast-iron mains, or at the rate of about five (5 %) per cent. per annum on the original cost, while the depreciation of the cast-iron mains does not exceed two (2 %) per cent. per annum. Consumers' meters which also form a part of complainant's distributing system, are likewise subject to an average annual depreciation, due to various causes beyond complainant's control, which under the evidence may be conservatively placed at nine (9 %) per cent. per annum on the cost on the total number in use," for the reason that the same is erroneous, misleading and not supported by the greater weight of the evidence in this case.

12.

Defendant excepts to the sixteenth finding of fact that "depreciation exists and continues in a coal gas plant, notwithstanding repairs that are necessary to be made, to maintain its working effi-

ciency, and is an expense in the cost of the manufacture and
151 distribution of gas, that is outside of, and in addition to repair expenses. These latter increase as the plant grows older, and at about the periods herein given, notwithstanding repairs, the several parts so far depreciate as to render them valueless and useless for further service," for the reason that it — contrary to the evidence; in so much as it ignores completely consideration of the fact, proven by the evidence, that in most, especially in growing places, the appreciation from a growing business is more than a set-off to the depreciation of the works, and is in direct contradiction to a part of the master's finding of fact #23 that, "the Peoria territory is rapidly increasing in population;" and is in direct contradiction to the finding of the master in his 27th finding of fact, subdivision four, that "the fair market value of complainant's plant at the close of the taking of evidence was $450,000, exclusive of any value its license from the city of Peoria may have."

13.

Defendant excepts to the seventeenth finding of fact that, "the first cost to complainant in the manufacture and distribution of coal gas in the city of Peoria, may be said to be covered by the following charges, viz:

Interest at the rate of five (5%) per cent. per annum on the cost of its manufacturing plant and distributing system, which at the close of the taking of the testimony in this cause was, four hundred thirty-nine thousand seven hundred and twenty-five ($439,725) dollars. This sum represents its fair market value, and only the money then invested therein by complainant. Also depreciation at the rate of five (5%) per cent. per annum on the cost of the manufacturing plant, less the price for real estate on which it is located; five (5%) per cent. per annum, depreciation on the cost of the service connections installed; nine (9%) per cent. per annum depreciation on the cost of consumers' meters; five (5%) per cent. per annum depreciation on
the amount invested in tools, furniture and fixtures; two
152 (2%) per cent. per annum depreciation on the cost of distributing mains; also the cost of the material used; necessary labor; repairs to the system; leakage, or unaccounted for gas, as shown by the difference of registration in the station meter register, and consumers' meters; uncollectible accounts, taxes and office expenses," for the reason that such finding is erroneous and contrary to law.

First, because the master herein determines the rate of interest to be allowed, which would result in the framing of a rate to be charged by quasi-public corporations, and such power is not within the province of the courts in this country.

Second, because the master therein allows depreciation at five (5%) per cent. per annum on the cost of the manufacturing plant, less the price paid for the real estate on which it is located, which is contrary to the evidence and in direct conflict with the master's

finding of fact # 27, subdivision four, that "the fair market value of complainant's plant at the close of the taking of the evidence, was four hundred and fifty thousand ($450,000) dollars, exclusive of any value its license from the city of Peoria may have."

14.

Defendant excepts to that part of the nineteenth finding of facts that, "the residuals produced per ton of coal carbonized, reduced the cost of gas to complainant about thirty-three (33%) per cent.," for the reason that the said finding is erroneous and contrary to the evidence, as the operating statement of complainant company for the year commencing September 1, 1901, and ending August 31, 1902, shows the reduction to have been nearly fifty (50%) per cent.

15.

Defendant excepts to that portion of the nin-teenth finding of fact, that "the gas manufactured by complainant from September 1, 1900 up to September 1, 1901, as shown by the evidence, cost the complainant in the holder, per thousand cubic feet, seventy-seven
153 and nine-tenths (77.9/10) cents, after deducting from the cost of production the market value of all the residuals obtained from the coal carbonized. This cost was upon the basis of an output of about fifty-one million (51,000,000) cubic feet per year, and does not include the cost of distribution," for the reason that the same is misleading, immaterial and contrary to the evidence, and under the law, even were the fact proven, should not be considered in arriving at a judgment in this case, as such cost was based upon the manufacture of only fifty-one million (51,000,000) cubic feet per year, while the total amount of gas consumption in the city of Peoria, according to the master's finding of fact # 21, is one hundred and sixty-five (165,000,000) million cubic feet per year.

16.

Defendant excepts to the refusal of the master to find the following facts requested by defendant:

"That the contract of October 24, 1901, between the two companies providing that complainant should furnish to the Peoria Gas Light & Coke Company gas delivered in the holder of the latter company at $.75 for gas actually consumed and $.50 per thousand for 'unaccounted for' gas, for a period of ten years, was not made for the purpose of furnishing the old company, so called, an opportunity to rebuild or repair its plant; but the same was in pursuance of an agreement or understanding touching the subject of combination between the two companies; that said old company's repairs could have been made while it was in operation, as had always previously been done, and as is done by gas companies throughout the country; that for at least six months after October 26, 1901, nothing

whatever was done by said Peoria Gas Light & Coke Company with reference to repairing or rebuilding any part of its manufactory or system, but during said period it had dismantled and torn down certain parts of it, with no intention of ever rebuilding the same, and the same had not been rebuilt. That at the time said Peoria Gas Light & Coke Company discontinued the manufacture of
154 gas, on or about October 26, 1901, the major part of its manufactory was substantially new and of the latest and best design for the economical manufacture and distribution of gas."

17.

Defendant excepts to the refusal of the master to find the following facts requested by defendant:

"That the gas so delivered under the contract referred to was supplied through a 16 inch main placed wholly at the expense of complainant company; that its length was 800 or 900 feet, and was installed complete prior to the commencement of negotiations terminating in the contract of October 24, 1901, under which complainant com- furnished gas to the Peoria Gas Light & Coke Company from October 26, 1901, to and including August 19, 1902."

18.

Defendant excepts to the refusal of the master to find the following facts requested by defendant:

"That during the time the contract of October 24, 1901, between the two companies was in force the street superintendent of complainant acted in that capacity also for the Peoria Gas Light & Coke Company, and without any additional compensation; that such superintendent in his work for both of said companies was subject to the direction of F. W. Little, the general manager of complainant; that during the same period the works and manufacturing plant of the Peoria Gas Light & Coke Company were in the exclusive charge of complainant's superintendent at the works, who received no additional compensation for his service in caring for such property."

19.

Defendant excepts to the refusal of the master to find the following facts requested by defendant:

"That complainant company, at the time of and prior to the passage of its franchise ordinance, represented to the members
155 of the city council and to the public generally, that it desired to enter the Peoria territory for the purpose of competing with the Peoria Gas Light & Coke Company in the furnishing of gas, and that as a consequence of such competition substantial benefits would accrue to the city and citizens in the reduction of rates; that it proposed to operate independent of the other company. That in the matter of independent operation and competition

with benefit to the public complainant company has violated its pledges; that it has entered into an agreement or combination with said Peoria Gas Light & Coke Company whereby all competition or semblance thereof, has ceased, and that such arrangement has been effective and operative between said two companies since July 31, 1900, if not from an earlier date, and that such being the fact the prices now charged by complainant company *is* in fraud of the rights of the citizens of Peoria, and in violation of the laws of the State of Illinois."

20.

Defendant excepts to the twentieth finding of facts of the master that, "in the latter part of October, 1901, complainant entered into a contract with the Peoria Gas Light & Coke Co. to supply it with gas for the use of its consumers and customers. This last named company then, and for many years prior had occupied substantially the same territory that complainant was then occupying with its distributing system, and had in addition about twenty miles of mains in the public highways that complainant did not then, nor does not now occupy. It had also in use about four thousand four hundred (4400) meters. This contract was terminated by the Peoria Gas Light & Coke Company on August 19th, 1902, but during the ten months' period it was in force complainant furnished and delivered into the holder of the Peoria Gas Light & Coke Company upwards of one hundred and four (104) million cubic feet of gas at a charge to it of seventy-five (75) cents per thousand cubic feet. This gas was delivered by means of a pipe about three hundred (300) feet long laid upon the premises of the two companies connecting the gas holder of the Peoria Gas Light & Coke Company
156 with the station meter of the complainant, which registered the amount supplied. The difference in quantity between the complainant's station meter and the amount as indicated by the consumers' meters was paid for by the old company at the rate of fifty (50c.) cents per thousand cubic feet. It was delivered by the old company through its own distributing system to its own consumers and at its cost. The gas so furnished and the price charged by complainant therefor, is a question purely of business judgment between private parties, and such price cannot be accepted as conclusively establishing the cost to complainant of gas manufactured by it, where it must also bear the expenses incident to distribution, as is the case in supplying its own consumers throughout the city," for the reason that such finding is erroneous and contrary to the law and the evidence, for the following reasons: "That the finding of the master therein that this gas was delivered by means of a pipe about three hundred (300) feet long, laid upon the premises of the two companies, is unsupported by the greater weight of the evidence; and said finding in its entirety, is erroneous and contrary to the law and evidence, for the reason that the evidence shows that previous to the date of said alleged contract the Peoria Gas Light & Coke

Company and complainant company had entered into a combination, and were controlled and worked under the dictation of one management, and that said contract was entered into as a mere makeshift occasioned by the rulings of the court and master, relative to the investigation of the complainant's books, and was prepared and executed by the management of the two companies for the purpose of deceiving the court and master as to the actual relation existing between the complainant company and the Peoria Gas Light & Coke Company, and that under the laws of the State of Illinois the complainant company having so entered into such combination, said company was not empowered under the laws to charge a greater rate for gas than the lowest rate it had charged during the year immediately preceding the time such combination became effective between the two companies."

157 21.

Defendant excepts to the refusal of the master to find the following facts requested by defendant:

"That the disposition made by the Peoria Gas Light & Coke Company of the gas by it purchased from complainant company is immaterial; that during the period said contract was operative it occupied, irrespective of the question of combination, the status of any other consumer, and the price fixed by said contract to be paid complainant company for the gas so furnished is significant in determining the reasonableness of the rate fixed by said 'maximum' ordinance."

22.

Defendant excepts to the 21st finding of facts that, "the gas consumption in the city of Peoria is now about one hundred and sixty-five (165) million cubic feet per year, the use of which for illuminating and heating purpose is about equal. Of this total consumption complainant is supplying about fifty-five (55) million cubic feet per annum to its consumers, through its twenty-six and one half (26½) miles of mains, and about two thousand four hundred (2,400) meters, the Peoria Gas Light & Coke Company supplying the remainder of total consumption. Complainant's manufacturing plant is capable of producing the total quantity of gas now used in the city; its distributing system is, however, much too limited to distribute that quantity of gas, and in order to do so it would require an expenditure of more than double the sum it now has invested in that branch of its system. If complainant's plant was supplying all the coal gas now consumed in the city, it could reduce the manufacturing cost to it two (2) to three (3) cents per thousand cubic feet, but the cost incident to distribution, as between the present amount furnished by complainant and the total amount consumed, would be relatively increased," for the reason that said finding is erroneous and contrary to the evidence in that, (irrespective of the question of combination then existing between the two companies)

the report contained in the operating statement of complainant company during that period, shows conclusively that gas can
158 be manufactured and sold and a reasonable profit obtained, after paying all operating expenses and allowing for depreciation, (if any such allowance should be made) where such gas is sold at seventy-five (75c.) cents per thousand cubic feet. And for the further reason that said operating statement of complainant company, offered in evidence, for the year beginning September 1, 1901, and ending August 31, 1902, when it was manufacturing all the gas in the city of Peoria, shows that the actual cost to complainant company, including cost of distribution and an abnormal charge for legal expenses, loss and damages, was $.465 cents while for the preceding year, according to the finding of the master the cost to complainant company was $.779 cents per thousand cubic feet, exclusive of any charge for depreciation.

23.

Defendant excepts to the twenty-second finding of facts that, "the average consumption of gas per annum, per meter, in use in the city of Peoria is about twenty (20) thousand cubic feet, which is about the average consumption in cities of like size and character of population. And it appears from the evidence that any material increase of gas consumption will require of complainant an extension of its distributing mains, service connections and meters, the producing capacity of its manufacturing plant being amply sufficient to meet any reasonable expectations in that respect," for the reason that said finding is erroneous and immaterial, for that the evidence shows that there is a combination existing between the complainant company and the Peoria Gas Light & Coke Company, and that an increase in gas consumption could and would be supplied through the present system of mains in the Peoria territory.

24.

Defendant excepts to the twenty-third finding of facts that, "the Peoria territory is rapidly increasing in population and the
159 quantity of gas required to meet the demands of such increase, together with the more general uses for which gas is now sold and required, justifies the policy adopted by complainant when it constructed its manufacturing plant, of so building as to be in a position, as a producer of gas, to meet such additional demands for its product, and it cannot be said that its expenditures for such purpose in the construction of its manufacturing plant involve a useless and unnecessary investment of capital, which should not be considered in determining the present cost to it of producing coal gas;" for the reason that at the time complainant obtained its franchise ordinance in the city of Peoria no necessity for another gas company existed in the Peoria field; and for the reason that said plant was installed and constructed for the mere purpose of forcing the Peoria Gas Light

nounced by the Federal and State courts, that it may be now said to be definitely settled. The one particularly applicable in this case is, that the defendant at the time it had under consideration the ordinance fixing the maximum rate to be charged for gas, was not only without knowledge as to whether the rate fixed was a fair, just and reasonable one; but it also had no convenient or ready means of acquiring such knowledge," for the reason that such finding is erroneous and contrary to the evidence and law, as applicable to this case.

36.

Defendant excepts to the twenty-fifth finding of law that "the conclusions of the special master are, that the ordinance in controversy in this case, is unreasonable in respect to the price as therein fixed; that the enforcement of its provisions against complainant would constitute the taking of the property of complainant without due process of law, and in the taking of private property for public use, without just compensation; that the ordinance being void, because it is unreasonable, the enforcement of it against the complainant should be restrained by the court, and to that end an injunction should be allowed perpetually enjoining the defendant, its officers and agents from enforcing or attempting to enforce the provisions thereof against complainant, as prayed in and by its bill herein," for the reason that such finding is erroneous and contrary to the law and evidence, for the following reasons:

1. That the evidence shows conclusively that gas can be manufactured and a fair return obtained, after paying the actual
166 operating expenses incident to the manufacture of all the gas used in the city of Peoria, upon the basis of the sale of gas so used at seventy-five (75) cents per thousand cubic feet.

2. Because the master therein recommends that the enforcement of the ordinance against complainant should be restrained by the court, and to that end an injunction should be allowed perpetually enjoining the defendant, its officers and agents, from enforcing or attempting to enforce the provisions thereof against complainant, as prayed in and by its bill herein; for, in the event said defendant was perpetually enjoined from enforcing the terms and conditions of said ordinance, it would thereby be prevented from ever again passing an ordinance limiting the price to be charged at seventy-five (75) cents per thousand cubic feet, in the city of Peoria, which would be inconsistent with the finding of law made by the master, that the city of Peoria has a right to regulate the price which may be charged for gas in said city.

37.

Defendant excepts to the refusal of the master to find the fol-owing facts requested by defendant:

"That five hundred and eighty thousand ($580,000) dollars does not represent the structural cost of the whole plant of the Peoria

Gas Light & Coke Company, but is the sum total of all expenditures in construction, replacements, additions, extensions, etc., to date."

38.

Defendant excepts to the refusal of the master to find the following facts requested by defendant:

"That since complainant company began to supply gas it has made no extension of mains, except four hundred or five hundred feet of four (4) inch mains in the alley between California and Missouri avenues."

167

39.

Defendant excepts to the refusal of the master to find the following facts as requested by defendant:

"That since May 1, 1900, the Peoria Gas Light & Coke Company has made no extension of mains."

40.

Defendant excepts to the refusal of the master to find the following facts as requested by defendant:

"That the cost of gas manufactured and sold by complainant during the year ending September 1, 1902, including all items properly charg-able thereto, was such, that had its entire output been sold at seventy-five (75) cents per thousand cubic feet, a fair return on the necessary investment would have been realized."

41.

Defendant excepts to the refusal of the master to find the following facts as requested by defendant:

"What it may cost complainant to furnish gas afford- no criterion regarding the price properly charg-able to the public. The primary fundamental question is, whether or not one company, with proper investment covering and supplying the whole of the Peoria district can furnish gas at seventy-five (75) cents per thousand cubic feet and make a profit."

42.

Defendant excepts to the refusal of the master to find the following facts as requested by defendant:

"That no portion of stock of complainant company at the close of the evidence was paid up or that the stockholders of complainant company, or any of them, did not have a dollar invested in the enterprise."

168

43.

Defendant excepts to the refusal of the master to find the following facts as requested by defendant:

"That the requirements of the ordinance of September 4, 1900, imposed no unreasonable or unjust burdens upon complainant company, either in the matter of rates or in the candle-power of gas to be furnished to the city and citizens; its provisions are in harmony with what complainant's representatives declared to the city council and citizens of Peoria generally, would follow from the passage of its franchise ordinance of April 18, 1899, and in fairness and justness complainant has no reasonable ground for complaint."

44.

Defendant excepts to the refusal of the master to find the following facts as requested by defendant:

"That if the Peoria Gas Light & Coke Company had any legal existence at all it was only on sufferance by complainant company, and that it suffered to continue to preserve its technical legal existence, only to subserve private interests, and not to subserve any public interest, nor to perform the public duties imposed upon it by the State; that its duties to the public have been usurped and are now being performed by complainant company; that the latter has absolute control *de facto* of all the property, of which the Peoria Gas Light & Coke Company may have a dry, technical, legal title,—in a word, that *de facto* the complainant company owns, operates and controls the manufacturing plant and distributing system of the Peoria Gas Light & Coke Company which, for purposes of its own, it chooses to operate under the mask of the name of the Peoria Gas Light & Coke Company."

45.

Defendant excepts to the refusal of the master to find the following facts as requested by defendant:

169 "The master failed to find that, since the commencement of this suit, although the exact date or dates are not clearly disclosed by the evidence thus far taken, the officers, directors, stockholders or stockowners of and in the said Peoria Gas & Electric Company, the complainant herein, have, together with the said Peoria Gas & Electric Company, created and entered into, and become a party to, and a part of, an unlawful and secret association, combination, syndicate, pool or trust; and have passed over into the hands of the said unlawful and secret association, combination, syndicate, pool or trust, a majority of the capital stock of the said Peoria Gas & Electric Company, by transferring said majority of said capital stock over into the hands of Sumner R. Clark and John R. Walsh, as managers or trustees of and for the aforesaid unlawful and secret association, combination, syndicate, pool or trust, with the purpose and intent to take out of the hands of the officers, directors, and stockholders or stockowners, in and of the said Peoria Gas & Electric Company, all power or voice in the management, operation or control of the gas rights, interests, business and property of the com-

plainant, in the city of Peoria, and to place the same in the hands of the aforesaid unlawful and secret association, combination, syndicate, pool or trust, to destroy and abolish competition in, and to unlawfully control the manufacture of, and to unlawfully regulate, fix and determine the price to be charged for gas, to be made and supplied to, and to be used and paid for by, the public in the city of Peoria."

46.

Defendant excepts to the refusal of the master to find the following facts as requested by defendant:

"The master failed to find, that the aforesaid Sumner R. Clark and John R. Walsh, as managers or trustees of and for the aforesaid unlawful and secret association, combination, syndicate, pool or trust, for and in consideration of the aforesaid transfer to
170 them, of a majority of the capital stock of the complainant company, in the manner, and for the purposes aforesaid, issued and delivered to the aforesaid stockholders or stockowners, respectively, certain certificates in evidence of such respective transfer, which said certificates were each signed by the said Sumner R. Clark and John R. Walsh, as managers of and for the aforesaid unlawful and secret association, combination, syndicate, pool or trust, and which said certificates were each marked and designated as "trust stock certificates."

47.

Defendant excepts to the refusal of the master to find the following facts as requested by defendant:

"The master failed to find that, pursuant to the aforesaid unlawful and secret association, combination, syndicate, pool or trust, the stook-book or book of capital stock certificates of and pertaining to the complainant company, together also with all the capital stock certificates in and of the said Peoria Gas & Electric Company, transferred over, as aforesaid by the stockowners of the same to the said managers or trustees of the said unlawful and secret association, combination, syndicate, pool or trust, are all held in trust or in *escrow* by the Equitable Trust Company of Chicago, Illinois, for the further purposes of the aforesaid unlawful and secret association, combination, syndicate, pool or trust, and that pursuant to the purposes of the aforesaid unlawful and secret association, combination, syndicate or trust, all transfers of the capital stock in the complainant company, as well also as all transfers of "trust stock certificates," are required to be made in the office of the said Equitable Trust Company."

48.

Defendant excepts to the refusal of the master to find the following facts as requested by defendant:

171 "The master failed to find that, since the commencement of this suit, if in fact not from an earlier date, said Peoria Gas & Electric Company, complainant, has not owned, nor had in its custody, possession or control, any of the gas property, rights or interests in the city of Peoria, which may have at a prior date belonged to it; but that since the date of the making of, entering into, the aforesaid unlawful and secret association, combination, syndicate, pool or trust, and since the aforesaid transfer of a majority of the capital stock of said Peoria Gas & Electric Company to the aforesaid managers or trustees of the said unlawful and secret association, combination, syndicate, pool or trust all the gas property, rights and interests, which the said Peoria Gas & Electric Company may have prior to that time owned in the city of Peoria, passed into the hands of, and into the possession and control of, and became the property of the said unlawful association, combination, syndicate, pool or trust; the name of which, however, if any it has, has not yet been disclosed by the evidence thus far taken in this case, except the names of the aforesaid managers or trustees thereof, to-wit, Sumner R. Clark and John R. Walsh."

49.

Defendant excepts to the refusal of the master to find the following facts as requested by defendant:

"The master failed to find, that since the aforesaid transfer of the capital stock of said Peoria Gas & Electric Company to the said managers or trustees of and for the said unlawful and secret association, combination, syndicate, pool or trust, down to the close of the testimony herein, said unlawful and secret association, combination, syndicate, pool or trust has been exclusively the owner of and in possession, control and operation of all the gas property, rights and interests of the said Peoria Gas & Electric Company of Peoria."

172 50.

Defendant excepts to the refusal of the master to find the following facts *are* requested by defendant:

"The master failed to find, that the complainant which began this suit and which is the only party complainant to it, has no longer any right or interest herein, which can be the subject matter of any decree in its favor; but that the complainant has passed and conveyed to other parties not connected in any way as parties litigant herein, any and all rights and interests which complainant may have had, if any at any time, and that such parties to whom the same has been passed and conveyed are not parties to this suit."

Respectfully submitted,

WALTER H. KIRK,
HENRY MANSFIELD,
Solicitors for Defendant.

Endorsed: "Filed July 30 1903. Marshall E. Sampsell, clerk."

173 And afterwards, to-wit on the twenty-third day of September, A. D. 1903, the same being one of the regular days of the regular April A. D. 1903 term of said court, among others, further proceedings were had in said cause and entered of record in the words and figures following, to wit:—

174 Circuit Court of the United States, Northern District of Illinois, Southern Division.

WEDNESDAY, *September 23d, A. D.* 1903.

Present: Hon. J. Otis Humphrey, district judge.

PEORIA GAS AND ELECTRIC COMPANY
vs. } 288.
CITY OF PEORIA.

This cause coming on to be heard upon exceptions to the report of the special master herein and before the conclusion of the arguments herein, the hour of adjournment having arrived it is ordered by the court that further hearing herein be postponed until to-morrow morning at ten o'clock.

175 And afterwards, to-wit on the twenty-fourth day of September A. D. 1903, the same being one of the regular days of the regular April A. D. 1903 term of said court, among others, further proceedings were had in said cause and entered of record in the words and figures following, to-wit:—

176 Circuit Court of the United States, Northern District of Illinois, Southern Division.

THURSDAY, *September 24th, A. D.* 1903.

Present: Honorable J. Otis Humphrey, district judge.

PEORIA GAS AND ELECTRIC COMPANY
vs. } 288.
CITY OF PEORIA.

This cause coming on to be further heard upon exceptions to the report of the special master herein and the hour of adjournment having arrived before the conclusion of the arguments thereon, it is ordered by the court that further hearing herein be postponed until to-morrow morning.

177 And afterwards, to-wit, on the twenty-fifth day of September A. D. 1903, the same being one of the regular days

of the regular April A. D. 1903 term of said court, among others further proceedings were had in said cause and entered of record in the words and figures following, to-wit:—

178 Circuit Court of the United States, Northern District of Illinois, Southern Division.

FRIDAY, *September 25th, A. D.* 1903.

Present: Honorable J. Otis Humphrey, district judge.

PEORIA GAS AND ELECTRIC COMPANY
vs. } 288.
CITY OF PEORIA.

This cause coming on to be further heard upon exceptions to the report of the special master herein and the court having heard the arguments of counsel to conclusion and not being sufficiently advised in the premises, takes times to consider.

179 And afterwards, to-wit, on the ninth day of February, A. D. 1904, the same being one of the regular days of the regular October term A. D. 1903, among others, further proceedings were had in said cause and entered of record in the words and figures following, to-wit:—

180 Circuit Court of the United States, Northern District of Illinois, Southern Division.

TUESDAY, *February* 9, *A. D.* 1904.

Present: Hon. J. Otis Humphrey, district judge.

PEORIA GAS AND ELECTRIC COMPANY
vs. } 288.
CITY OF PEORIA.

Now again come the parties by their solicitors and upon motion of counsel for the complainant leave is hereby given to complainant to file subsequently but as of this date its petition for a rehearing.

181 And afterwards on to-wit the ninth day of February, A. D. 1904, there was filed in the office of the clerk of said court in said cause suggestion of the damages by defendant, which said suggestion is in the words and figures following, to-wit:—

182 UNITED STATES OF AMERICA, *State of Illinois*, } ss:

In the Circuit Court of the United States, Northern District of Illinois, Southern Division, at Peoria.

PEORIA GAS & ELECTRIC COMPANY, Complainant, v. CITY OF PEORIA, Defendant. } In Chancery. For Injunction, etc.

Suggestion of Damages by Defendant.

And now comes the defendant, City of Peoria, by Walter H. Kirk, city attorney, its solicitor, and in pursuance of the statute in such case made and provided, suggests to the court here, that by reason of the wrongful suing out of the injunction in this cause, this defendant has sustained damages in a large sum, to-wit:—fifteen thousand dollars ($15,000.00)

1*st*. By reason of this defendant being compelled to, and having paid out divers sums of money, to-wit: the sum of five thousand dollars ($5,000) for the reasonable fees and charges of its solicitorss and counsel, and for other charges and expenses in and about the procuring of the dissolution of the writ of injunction in said cause, rendered necessary therein by reason of the wrongful suing out of the same; and in a like sum for expenses of witnesses in attending court in procuring said dissolution as aforesaid; and in a

183 like sum for printing abstract of the record and defendant's brief and argument filed herein, together with the further and additional costs and expenses of telegrams, railroad fare and incidental expenses incident to the taking of testimony at various points away from Peoria, and for the services of further and additional clerks and stenographers.

By means of which premises, this defendant has sustained damages to a large amount, to-wit, the sum of fifteen thousand dollars; which said damages remain wholly unpaid to the defendant; wherefore the defendant prays that the said damages may be assessed to it, against the complainant, in pursuance of said statutes.

WALTER H. KIRK,
City Attorney and Solicitor for Defendant, City of Peoria.

Endorsed: "Filed February 9, 1904. Marshall E. Sampsell, clerk."

184 And afterwards on the same day, to-wit the ninth day of February A. D. 1904, the same being one of the regular days of the regular October A. D. 1903 term of said court, among others, further proceedings were had in said cause and entered of record in the words and figures following, to-wit;—

& Coke Company to sell its stock, and for the purpose of entering into a combination with the Peoria Gas Light & Coke Company for the sale of gas in the Peoria territory.

25.

Defendant excepts to the twenty-fifth finding of facts that, "it appears from the evidence that complainant company is capitalized at two million ($2,000,000) dollars, on no part of which have the holders of its stock ever received any dividends whatever, nor have any been declared by its managing board. The salaries of its officers do not seem to be extravagant, or in excess of the amount usually paid by other engaged in like business enterprises, the vice-president of the company being also its active business manager. Its working capital, composed of its bills receivable and cash on hand, is not in excess of the amount required to enable it to take advantage of favorable market prices in the material entering into the production of coal gas. It is not seeking in this case the right to charge for gas a price that will enable it to pay dividends on its capital stock. Its claims are, that the maximum rate fixed by the ordinance here in controversy, is so unreasonably low, as to prevent it from realizing in the manufacture and distribution of gas in the Peoria territory,
160 income therefrom, sufficient to meet the unavoidable depreciation to its manufacturing plant and distributing system, the making from time to time of necessary repairs thereto, and a normal rate of interest on the amount of money now actually invested therein;" for the reason that the same is immaterial, improper and misleading, as a greater weight of the evidence shows that no such sum is invested in the gas business in the city of Peoria, and also shows conclusively that the only assessment ever called for on the unpaid original capital stock of the company amounted to twenty (20 %) per cent. thereof, and that assessment so made was afterwards refunded by the company to the stockholders, with interest thereon at the rate of six (6 %) per cent. from the time the assessment was levied to the date of refunding, and there is nothing in the record to show that the stockholders or the company ever paid a cent or borrowed any money for the purpose of incorporation, or that the said stockholders have at the present time invested any money in such undertaking; and for the further reason that said plant was constructed for the purpose of obtaining control of the Peoria gas field and entering into a combination with the Peoria Gas Light & Coke Company.

26.

Defendant excepts to the twenty-sixth finding of facts that, "at the close of the taking of the evidence in this cause complainant's manufacturing plant and distributing system were in a high state of working efficiency, as regards the economical manufacture and distribution of coal gas, the management of its affairs, skillful and prudent; yet, notwithstanding these favoring conditions, it is con-

usively shown by decided weight of the evidence that the income would receive from the sale of gas as shown by consumers' meters use, at the rate of seventy-five (75) cents per thousand cubic feet, gether with the market value of all residuals produced per ton of coal carbonized, will not yield an income sufficient to meet
61 the amount of annual depreciation to its plant, the expenses incident to making of necessary repairs thereto, and a normal terest charge on the amount of money invested in such plant."

For the reason that the same is erroneous and contrary to the idence and the law, as it eliminates entirely the fact of the combiation existing between the complainant company and the Peoria as Light & Coke Company, and irrespective of such combination iminates from a consideration of the case the rights of the public, nd subjects them to the payment of unreasonable rates in order at the stockholders of complainant company may earn dividends, hen not a cent is invested in the enterprise, and is based upon a le of law not applicable to this case.

27.

Defendant excepts to the finding of the master, contained in subivision four (4) of finding of facts seventeen, that: "the fair arket value of complainant's plant at the close of the taking of the vidence was four hundred fifty thousand ($450,000) dollars, exclive of any value its license from the city of Peoria may have," for he reason that it in direct conflict with the master's finding, that ertain sums should be allowed for depreciation on various items enering into the constructive value of the plant, and in direct conflict with the finding of the master, that "* * * the cost of its complainant's manufacturing plant and distribution system,—at the lose of the taking of the testimony in this cause, was four hundred hirty-nine thousand seven hundred twenty-five ($439,725) dollars; his sum represents it- fair market value."

28.

Defendant excepts to the finding of facts in subdivision fourteen 14), twenty-seventh finding, that "under the present known methods, he cost to complainant of manufacturing and distributing coal gas n the Peoria territory is in excess of the sum of seventy-five (75c.) cents per thousand cubic feet, the maximum rate fixed by
162 the ordinance adopted by defendant, which said ordinance is now claimed by defendant, to be a valid law of the city of Peoria."

For the reason that such finding is erroneous and contrary to the evidence and the law, inasmuch as it eliminates from consideration the fact of combination, and the rights of the people to be charged only reasonable price for gas; and for the reason that the evidence conclusively shows, under the law, that the price of seventy-five (75) cents per thousand cubic feet is a reasonable price to charge consumers for gas in the city of Peoria.

29.

Defendant excepts to the third finding of law, that: "it is an established principle that any law which deprives a person of the right of any substantial benefit in connection with its use, or if in such use, by reason of the operation of such a law, he is not only prevented from receiving a normal interest return upon his investment, but is required to suffer loss in its use, he is, in the eyes of the law, deprived of his property, and the fact that it is employed for the public convenience, and whether the person be artificial or real, in no manner affects the application of the rule."

For the reason that such finding is erroneous and not supported by law, in so much as it eliminates entirely from consideration the fact of combination and the rights of the public to be furnished gas at a reasonable rate, irrespective of the number of gas plants that may be erected, and is also contrary to law to the extent that under the rule found, "What is a normal interest?" must be determined by the court, and such finding indirectly compels the court to establish the price at which gas might be sold, and thus abolishes the distinction between the judicial and legislative branches of government.

163

30.

Defendant excepts to the sixth finding of law that, "the fact being established that complainant cannot manufacture and distribute gas to the citizens of Peoria at the maximum rate fixed by the ordinance, it then follows that:

a. The ordinance is void, because by it the city has gone beyond the powers conferred by the laws of the State of Illinois, which confer upon it the power to regulate the price to be charged for gas. It constitutes the exercise of a lawful right in an unreasonable menner; and,

b. The enforcement of the ordinance requiring complainant to furnish gas to the citizens of Peoria, at the point of consumption, at the maximum price therein fixed, would constitute the taking of private property for public use, without just compensation, and in that respect is in violation of the provisions of the Constitution of the United States." For the reason that such finding is erroneous and contrary to law, because the finding is based upon the conclusion of the master, that gas cannot be profitably manufactured and distributed in the city of Peoria at seventy-five (75) cents per thousand cubic feet, which conclusion is contrary to the evidence in this case.

31.

Defendant excepts to the twelfth finding of law that, "the fact (as found) that the defendant has exercised this delegated power unreasonably, and by ordinance has imposed such regulations upon complainant in the further pursuit of its business affairs as to com-

pel it either to abandon its business of manufacturing and distributing gas in the city, or to suffer financial loss and injury in continuing it, tends only to establish the invalidity of this ordinance, and the further conclusion that by its provisions the agent of the State, in this case the defendant) has gone beyond the power conferred upon it by the State, and when it did so, as it has in this in-
164 stance, and is, assuming to act under such ordinance, void, though it be the fact that it is void, will not oust the court of jurisdiction to restrain the defendant from enforcing its provisions against complainant; nor is the Federal court thereby deprived of jurisdiction to grant complainant such relief." For the reason that such finding is erroneous, because founded upon a fact not proven by the greater weight of the evidence.

32.

Defendant excepts to the eighteenth finding of law that, "the evidence in this record shows that the maximum rate fixed by the above ordinance is so unreasonably low as to require complainant to furnish gas to the citizens of Peoria at a price below the cost of manufacturing and distributing it. The enforcement of it would constitute a taking of its property for public use, without just compensation; this is prohibited by the fourteenth amendment of the Federal Constitution." for the reason that such finding is erroneous as under the law the evidence conclusively shows that seventy-five (75) cents would be a reasonable price to be charged consumers for gas in the city of Peoria, irrespective of the fact that a combination exists between complainant company and the Peoria Gas Light & Coke Company.

33.

Defendant excepts to the twentieth finding of law that, "the threatened enforcement of this ordinance against complainant by prosecutions under its penal provisions, and the multiplicity of suits that would necessarily follow, and the injury complainant would suffer in either defending against such prosecutions or complying with the provisions of the ordinance,—there can be no doubt of the power of the court of equity to grant it relief," for the reason that such finding is er-oneous and contrary to law.

165 34.

Defendant excepts to the twenty-third finding of law that, "under the facts as found, the estoppel set up by the defendant cannot be sustained," is erroneous under the law and evidence in this case.

35.

Defendant excepts to the twenty-fourth finding of law that, "the uniform dostrine of estoppel *in pais* has been so frequently an-

Objected to by complainant as incompetent, immaterial and irrelevant.

Said rule 38, was marked by the master Exhibit "A" and is in the words and figures following, to-wit:

201 Circuit Court of the United States for the Northern District of Illinois.

Rule 38.

Ordered, That hereafter in all cases in chancery before the same shall be heard by the court, the pleadings shall be printed, and before they shall be heard on the final hearing upon the merits an abstract of the proofs shall be printed, and in case the counsel cannot agree upon the abstract of the proofs, the court will, on application, appoint some fit person to *make* such abstract, the expense of such printing or abstract to be taxed as costs in the cause against the party adjudged to pay the same; but the court may by special order obtained six days before the hearing, dispense with such printing or abstract or some parts thereof.

August 4, 1879.

2/20/03.

A true copy.

Attest: MARSHALL E. SAMPSELL, *Clerk*.

202 EZRA F. PARKER, called on behalf of the defendant, City of Peoria, being first duly sworn, deposes and says.

Direct interrogatories by Judge EVANS:

1. State your name to the master?

Ans. Ezra F. Parker.

2. Where do you reside?

A. My residence is at # 1008 East Glen Oak avenue, Peoria, Ill., and my place of business is at # 104 South Adams street.

3. What is your business?

Ans. Printing business.

4. How long have you resided in the city of Peoria?

A. 30 years.

5. How long have you been in the printing business?

A. 30 years.

6. What relation do you occupy to the Peoria Printing & Stationery Company?

Ans. I am its general manager.

7. What is the character of the business carried on by the Peoria Printing & Stationery Company?

Ans. General printing business.

8. Is it engaged in the business of printing abstracts of record?

Ans. Yes sir;

9. How long has it been engaged in that business?

A. Ever since it has been in business.

10. Did the Peoria Printing & Stationery Company print the abstracts in this case filed with the court?

Ans. It did.

11. How many printed pages are there of the abstract of the record in this case that were printed by the Peoria Printing & Stationery Co.?

A. I do not know that I am prepared to answer that except as the abstract itself shows.

12. Have you examined the copies of the abstract that were filed with the court and are in court now before you?

Ans. Yes sir;

13. Examine the abstract and then state how many pages there are?

A. (Witness examining abstract) In volume 1, there are
203 324 pages, including the cover. In volume 2, there are 306 pages of the abstract proper, 73 pages of special master's report and 8 pages of index, making a total of 711 pages.

14. State whether this abstract was printed at the instance and request of the defendant, The City of Peoria, in this case?

Objected to by complainant as immaterial.

A. Yes sir.

15. Has the City of Peoria, the defendant in this case, paid the Peoria Printing & Stationery Company for the printing of this abstract?

Objected to by complainant as incompetent, immaterial and irrelevant; and for the further reason, that whatever may have been paid by the City of Peoria for such printing is not a proper element of damage to be considered in this proceeding.

A. It has.

16. How much did it pay?

Objected to by complainant same grounds as before.

A. $606.05 for the abstract alone.

17. Is that usual and customary price in this county for such printing?

(Objected to by complainant, same grounds.)

A. It is.

18. Is it a reasonable price for such printing?

Objected to by complainant, same grounds as before.

A. It is.

19. When was this printing done?
Ans. During July and Aug. 1903.

Counsel for complainant objects to all the foregoing testimony of the witness Ezra F. Parker, both questions and answers, on the ground that it is incompetent, immaterial and irrelevant; that the matters testified about are not proper elements of damage to be considered in this proceeding, and for the same reason moves the court to exclude the testimony from the record.

204 F. H. TICHENOR, called on behalf of the defendant, City of Peoria, being first duly sworn, deposes and says:

Direct interrogatories by Judge EVANS:

1. State your name and place of residence?
A. F. H. Tichenor; Peoria, Illinois.
2. What is your profession?
Ans. I am an attorney.
3. How long have you been an attorney?
Ans. Some 20 years.
4. Are you an attorney and counselor-at law of the United States circuit court of the northern district of Illinois?
A. Yes sir.
5. For how many years have you been an attorney and counselor of that court?
Ans. About 15 years.
6. You are acquinted with the parties complainant and defendant in this case, are you not?
Ans. Yes sir.
7. You have been counsel for the defendant, The City of Peoria in the litigation involved in this case, have you not?
A. I was for a portion of the time.
8. At what time did you become a solicitor for the defendant The City of Peoria, in this litigation?
Ans. January 8. 1902.
9. How long did you continue as counsel or solicitor for the defendant, City of Peoria, in this suit?
A. With the exception of one item of work done later, my services terminated on the 22nd, of November 1902.
10. What item of work do you refer to that was done later?
A. It was the preparation of suggestions to the special master of claims on the part of the defendant for the basis of his findings.
11. What was the state of the record, or how far had the case proceeded when you first became solicitor for the defendant in this case?
Ans. The complainant had closed its case in chief.
12. Do you mean by that, it had closed its examination of witnesses and putting in of its proof?

205 A. Yes sir; I might say I had been consulted a number of times before that, but I was not actually retained in the case until the date mentioned.

13. What was the general character of your services during the time you were acting as solicitor for the defendant, The City of Peoria, in this case?

Objected — by complainant as incompetent and immaterial.

A. I assisted in determining the policy of the defense; in the location and procuring of witnesses; in the examination of witnesses before the special master; in the preparation of the case for final argument; in abstracting the testimony—in part only—in the argument.

14. Where and at what places was testimony taken at which you assisted in this case?

A. In Peoria, Illinois, in Chicago, Illinois and at Syracuse, N. Y.

15. How much time did you put in taking testimony and rendering services for the defendant, The City of Peoria, in this case?

A. It is somewhat difficult to give a proper answer to that interrogatory from the fact that I worked a great deal at night as well as during the day, and for the major part of the time covered by my services for the defendant, I did a great deal of other work. As nearly as I can state it, I should say that probably it would amount to four months if it were accumulated and it might exceed that.

16. Who was the city attorney at that time?

Ans. Henry Mansfield

17. Was the employment of assistant counsel for him in this case reasonably necessary?

Objected to as incompetent and immaterial.

A. Yes sir; I think it was—decide-ly so.

18. How much of your time did you spend away from the city of Peoria in taking evidence and rendering services as solicitor

206 for defendant, The City of Peoria, in this case?

A. From recollection I think we were in Chicago between 10 days and two weeks; I was in Syracuse, N. Y. from the 17th of August until the 23d, of August, and all the time necessarily detained there; I made two or three other trips, the aggregate time consumed on them was perhaps a week; so far as my recollection at this time extends that was all the time actually spent outside of the city.

19. What was the character in a general way, of the questions involved or issues made by the pleadings in this case?

Objected to by complainant on the ground the pleadings speak for themselves.

A. The bill raised a number of constitutional questions; perhaps I will be unable at this time to state them, owing to the fact I have had nothing to do with the case since the date mentioned; I think

there were three or four of those in all; I think I would prefer to leave those questions to be answered by the bill itself; it has been so long since I have had occasion to consider them I could not recall the exact language in which they were stated.

20. An injunction had already been issued in this case, had it not, by the court restraining the city from enforcing the ordinance mentioned and set out in the bill before you rendered any services as solicitor for the defendant?

Objected to by complainant on the ground the pleadings in the case show for themselves.

A. Yes sir, the injunction had been granted early in September, 1900.

21. The object of the bill and the relief sought by it was to make the injunction perpetual, was it not?

Objected to by complainant as leading, bad in form and not the best evidence.

—. Yes sir. That was the purport of the bill.

207 22. The services rendered by you were all with reference to procuring a dissolution of that injunction on a final hearing, were they not?

Objected to by complainant as leading, suggestive, calling for a conclusion.

A. Fundamentall*h* considered the entire defense was aimed at defeating the injunction, as asked by the bill, and to prevent its being made permanent.

23. Did you render a bill, or statement for your services as solicitor for the defendant, to the city of Peoria?

Ans. I did.

24. Did you also render a bill to the city for expenses incurred by you in rendering such services?

Ans. I did.

25. How much was the amount of your bill for your solicitors' fees for the services rendered by you in this cause as solicitor for the defendant, The City of Peoria?

Objected to by complainant as incompetent, immaterial and not a proper element of damage to be considered in this proceeding.

A. $2500.

26. How much was the amount of the bill rendered by you to the city of Peoria for your necessary expenses in rendering the services which you have mentioned for the city?

Objected to by complainant — same grounds as before.

A. I have not seen that bill since it was receipted but my recollection is *it* that it was $161 and some cents.

27. Can you refresh your recollection from the bill now shown you as to the items of expenses which you rendered to the city?

Objected to by complainant as incompetent and if there was a bill rendered the bill itself is the best evidence.

A. Yes sir, I can.

28. Have you in your hand the itemized bill of the expenses rendered by you to the city of Peoria incurred by you in render-
208 ing the services to it as solicitor in this case?

Ans. Yes sir.

29. Are the items mentioned in that bill in your hands true and correct?

Ans. They are.

Judge EVANS: I now ask the master to mark the bill just identified by the witness "Exhibit B" and I offer the same in evidence on behalf the defendant, The City of Peoria.

Complainant's counsel object to the bill offered in evidence as incompetent, immaterial, irrelevant, no proper foundation laid and because it is not a proper element of damage to be considered in this proceeding.

Said bill marked "Exhibit B" was read to the master in the words and figures following, to-wit:

No. 24847. $100.00.

May 13, 1902.—By order of the city council, State of Illinois.

Treasurer of the city of Peoria pay to Henry Mansfield or bearer one hundred and no/100 dollars for cash advanced % gas case.

W. F. BRYAN, *Mayor.*

J. E. PILLSBURY, *Comptroller.*

No. 26934. $2,569.49.

May 2, 1903, *190–*.—By order of the city council of the State of Illinois.

Treasurer of the city of Peoria pay to F. H. Tichenor or bearer twenty-five hundred sixty-nine and 49/100 dollars for legal services.

W. F. BRYAN, *Mayor.*

J. E. PILLSBURY, *Comptroller.*

209 F. H. Tichenor, attorney and counselor, 541-2-3-4-5, T
Woolner.

PEORIA, ILL., *April* 4, 1903

PEORIA GAS & ELECTRIC CO.
vs.
CITY OF PEORIA,

Expense Bill.

City of Peoria to F. H. Tichenor, Dr.

1902.			
May	2.	To expenses, Springfield, to obtain ruling U. S. court.	$3
"	16.	" " trip to Kentucky, inc. transportation...	37
July	10.	" telegram to Morristown, N. J.....	
Aug.	2.	" telegrams, Syracuse and Detroit.....	2
"	5.	" telegram to Morristown, N. J.....	
"	25.	" expenses, 6½ days, Syracuse, N. Y. trip, inc. trans..	73
"	28.	" " trip to Kentucky, inc. transportation...	24
"	30.	" telegram, Syracuse, N. Y	
"	"	" express to Syracuse, N. Y.....	
"	3.	" telegrams, bill for August, in part	1
"	25.	" expenses two days in Chicago, including transportation	13
Oct.	18.	" expenses two days in Chicago, including transportation	9
			$169
May	13.	Cr. by cash, # 24847 script.....	100
		Balance.....	$69

Received payment,

FINANCE, 4/24/03.

O. K.
HENRY MANSFIELD, *City Att'y.*

Approved by the council 28 day of April, 1903.

ROBT M. CARR, *City Clerk.*

210 FINANCE, 4 | 23 | 3.

F. H. Tichenor, attorney and counselor, 541-2-3-4-5, The Woolner.

PEORIA, ILL., *April* 4, 1903.

PEORIA GAS & ELECTRIC CO.
vs.
CITY OF PEORIA.

Service Bill.

City of Peoria to F. H. Tichenor, Dr.

1903.
April 4. To legal services in full to date.. ..... $2500.00

Received payment,

—— ——.

O. K.
HENRY MANSFIELD,
City Attorney.

Approved by the council 28 day of April, 1903.
ROBT M. ORR, *City Clerk.*

Script 26934.

211 30. What is the total amount of your expenses?

Objected to same grounds as before.

A. $169.49.

31. Are you familiar with the usual and customary fees for services as solicitor such as were rendered by *the* you for the defendant The City of Peoria, in this case, in this county and in the southern division of the northern district of Illinois?

A. Yes, sir, I think so, so far as there is anything of that character.

32. Were the amounts of your bills for solicitor's fee and expenses, which you say you rendered to the city of Peoria, paid to you by the city?

Ans. Yes sir.

33. Was the sum of $2500 the usual and customary charge or fee for reputable attorneys and solicitors in this county and in the southern division of the northern district of Illinois for such services?

Objected to by complainant as immaterial.

A. It was certainly not in excess of the usual and customary fees for such services.

34. Was it then a usual an- customary fee for the services rendered by you?

Objected to by complainant as immaterial.

185 In the Circuit Court of the United States for the Northern District of Illinois, Southern Division.

TUESDAY, *February* 9, *A. D.* 1904.

Present: Honorable J. Otis Humphrey, district judge.

PEORIA GAS AND ELECTRIC COMPANY, Complainant, *vs.* CITY OF PEORIA, Defendant. } 288. In Chancery. For Injunction.

This cause coming on to be heard at this term, having heretofore been presented and argued by counsel and thereupon upon consideration thereof, it is ordered, adjudged and decreed that the exceptions made and filed herein on behalf of the defendant City of Peoria against the failure of the special master I. C. Pinckney to find in his report on file herein that the complainant, prior to the commencement of this suit, had formed, entered into and become a party to an illegal and unlawful combination, pool, trust, combination or arrangement with the Peoria Gas Light and Coke Company (the old gas company) should be and the same is hereby sustained.

And the defendant by leave of the court files herein its suggestions of damages and the court being of the opinion that said injunction was wrongfully sued out, said suggestions of damages by the defendant are hereby referred to F. C. Howe, master in chancery of this court to take proof as to the damages sustained by the defendant by reason of such wrongful suing out of such writ of injunction and to report the same together with his conclusions thereupon for the information and advice of the court.

186 And on the same day to-wit, the twenty-fourth day of February, A. D. 1904, there was filed in the office of the clerk of said court in said cause, objections to taking of testimony on suggestion of damages, which said objections are in the words and figures following, to-wit:

187 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS AND ELECTRIC COMPANY *vs.* CITY OF PEORIA. } In Chancery.

Now comes the complainant, Peoria Gas and Electric Company, by its solicitors, and in addition to such specific objections as it may hereafter make to any questions propounded to witnesses and their respective answers thereto, objects to the taking of testimony and to

ny and all testimony that may be offered by the defendant as to ny damages to be assessed against the complainant herein arising pon the suggestion of damages filed by said defendant in this pro-eeding, for the following reasons, namely:

1st. That said defendant is not entitled to have damages assessed n this proceeding, as sought by the suggestions of damages on file erein.

2nd. That there is no liability against the complainant in this roceeding for damages arising under said cause stated in defend-nt's suggestions of damages on file herein.

3rd. That said suggestions of damages are made up wholly of amages alleged to have been sustained by the defendant which are ot proper elements of damage to be considered under the record in his case.

4th. That it appears from said suggestions of damages that the ttorneys' service rendered and other expenses incurred, as claimed n said suggestions of damages, were each and all rendered and in-curred in the general defense of the suit.

188 5th. That it does not appear that defendant suffered any damage from the issuance of the preliminary injunction erein.

6th. That any testimony offered in support of defendant's sugges-ions of damages on file herein would be incompetent, immaterial nd irrelevant.

PEORIA GAS AND ELECTRIC COMPANY,
By E. C. RITSHER,
W. T. ABBOTT,
W. T. IRWIN,
Its Solicitors.

Endorsed: "Filed Feb. 24, 1904. Marshall E. Sampsell, clerk."

189 And afterwards on to-wit the twenty-fourth day of February, A. D. 1904, there was filed in the office of the clerk of said court, in said cause, motion for rule to file bill of particulars, which said motion is in the words and figures following, to-wit:

190 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS AND ELECTRIC COMPANY
vs.
CITY OF PEORIA. } In Chancery.

Now comes the complainant in the above entitled cause, Peoria Gas and Electric Company, by its solicitors, and moves the court for a rule upon the defendant to file herein forthwith and prior to proceeding to take the testimony upon the suggestions of damages

referred to the master herein, a bill of particulars setting forth in detail the damages alleged to have been sustained by the defendant, as alleged in its several suggestions of damages on file herein, for the following reasons, namely:

First. That this complainant is entitled to have exhibited a bill of particulars showing the several items and sums claimed as damages by the defendant in this proceeding.

Second. That the complainant cannot safely proceed to the taking of testimony herein upon said suggestions of damages without being first informed, by way of a bill of particulars, of the several items claimed by said defendant under said several suggestions of damages on file herein.

191 Third. That the complain- is entitled to have a bill of particulars exhibited herein prior to proceeding to take testimony upon said suggestion of damages, under the rules and regulations governing this court.

Fourth. That said suggestions of damages are indefinite and uncertain and do not sufficiently apprise the complainant of the damages sought thereby to be assessed against it.

PEORIA GAS AND ELECTRIC COMPANY,
By RITSHEL, MONTGOMERY, HART & ABBOTT,
JACK, IRWIN, JACK & DANFORTH,
Its Solicitors.

Endorsed: "Filed Feb. 24, 1904. Marshall E. Sampsell, clerk."

192 And afterwards, to-wit, on the twenty-fourth day of February A. D. 1904, there was filed in the office of the clerk of said court in said cause a motion, which said motion is in the words and figures following, tow-*ti*:

193 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS AND ELECTRIC COMPANY
vs.
CITY OF PEORIA. } In Chancery.

Now comes the complainant, Peoria Gas and Electric Company by its solicitors, and moves the master, on the suggestions of damages herein filed, to report to the court that no damages have been sustained by the defendant, as alleged in its suggestions of damages, under the record in this case, and that no competent evidence can be

offered by the defendant in support of any alleged damages arising under its suggestions of damages on file in this proceeding.

PEORIA GAS AND ELECTRIC COMPANY,
By E. C. RITSHER,
W. T. IRWIN,
W. T. ABBOTT, *Its Solicitors.*

Endorsed: "Filed Feb. 24, 1904. Marshall E. Sampsell, clerk."

194 And afterwards on to-wit the ninth day of March, A. D. 1904, there was filed in the office of the clerk of said court in said cause, the master's report on suggestion of damages, which said report is in the words and figures following, to-wit:—

195 United States Circuit Court, Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY
vs.
CITY OF PEORIA. } Chancery. No. 288.

Master's Report.

Pursuant to an order of this court entered on the ninth day of February, 1904, a copy of which accompanies this report, whereby there was referred to the undersigned the suggestion of damages resulting from the wrongful suing — of the injunction herein, with instructions to take proof as to the damages sustained by the defendant by reason of such wrongful suing out of such writ of injunction and to report the same together with his conclusions ther-on, the master on the tenth day of February, 1904, notified counsel for the respective parties by mail, that a hearing would be had on February 15th, 1904. A copy of said notice accompanies this report.

Pursuant to said notice on February 15th, 1904, came Walter H. Kirk, solicitor for the defendant, and upon his motion, counsel for the complainant not being present, the hearing was continued until February 19th, 1904.

On February 19, 1904, there being present Walter H. Kirk and Winslow Evans, solicitors for the defendant and William Jack for the complainant, by agreement of counsel, the taking of proof was postponed until February 24th, 1904.

On February 24th, 1904 came the parties by W. T. Abbott and W. T. Irwin for the complainant and Walter H. Kirk and Winslow Evans for the defendant and thereupon the complainant filed with the master copies of motions that day filed with the clerk of the court, *i. e.*, objections to taking testimony, motion to report no damages, and motion for rule to file bill of particulars.

196 Thereupon witnesses on behalf of the defendant testified as shown by the evidence submitted with this report, showing that the defendant City of Peoria has expended the following amounts for the purposes indicated, as follows:

Printing abstract of evidence before the special master.....	$606.05
Attorney's fee paid to F. H. Tichenor.....	2500.00
Necessary expenses of F. H. Tichenor.....	169.49
Special Master I. C. Pinckney, *per diem*.....	678.50
Necessary expenses "	72.27
Special Master I. C. Pinckney, fee.....	500.00
C. P. Watson reporting evidence before special master.....	352.70
C. P. Watson, reporting, *per diem*.....	100.00
C. P. Watson, necessary expense.....	74.02
Attorney's fee paid William Jack.....	180.00

Also evidence showing that the defendant City of Peoria incurred additional expense as follows:

Special master, I. C. Pinckney, *per diem* unpaid.....	$9.00
Attorney's fee Henry Mansfield.....	1000.00
C. P. Watson, copies of evidence for defendant.....	396.13
Walter H. Kirk, city attorney, necessary expenses.....	6.84

197 On March 5, 1904, the parties appeared before the master for argument as to his report, W. H. Kirk and Winslow Evans appearing for the defendant and W. T. Irwin and W. T. Abbott for the complainant and after argument on behalf of the complainant, the master concludes (counsel for the defendant assenting) that no damages have been sustained by the defendant, City of Peoria, by reason of the suing out of the injunction in this cause. The master further reports that the costs of this reference should be taxed against the defendant, City of Peoria, to-wit the sum of twenty-four dollars ($24.00) for the taking of the evidence upon said reference and the master's fee to be fixed by the court. All of which — respectfully submitted.

F. C. HOWE,
Master in Chancery.

Endorsed: "Filed Mar. 9, 1904. Marshall E. Sampsell, clerk."

198 And afterward on to-wit the ninth day of March A. D. 1904 there was filed in the office of the clerk of said court in said cause, evidence and exhibits accompanying the master's report on suggestions of damages, which said evidence and exhibits are in the words and figures following, to-wit:—

199 UNITED STATES OF AMERICA, } ss:
State of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY } Injunction and Relief.
vs.
CITY OF PEORIA. }

Testimony Taken Before F. C. Howe, Master in Chancery.

Appearances: For complainant, Mr. W. T. Irwin, Mr. W. T. Abbott. For defendant, Judge Winslow Evans, Mr. Walter H. Kirk, city attorney.

Index to Witnesses.

Names.	Direct.	Cross.	Re-direct.
Parker, Ezra F.	3		
Tichenor, F. H.	5	11	
Kirk, Walter H.	12	17	
Pinkney, I. C.	19	22	
Gorman, Thomas N.	22		
Mansfield, Henry	25	29	
Proctor, Chas. S.	30		
Woodruff, E. N.	32		
Watson, Chas. P.	34	36	
Kirk, Walter H. (re-called)	36	37	
Jack, Willam	37		

200 UNITED STATES OF AMERICA, } ss:
State of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY } Injunction and Relief.
vs.
CITY OF PEORIA. }

Testimony taken in the above entitled cause, upon defendant's suggestions of damages, before F. C. Howe, Esq., master in chancery, at the United States circuit court room, Government building, in the city of Peoria, in said district, on Wednesday, the 24th day of February, A. D. 1904, Mr. W. T. Irwin and Mr. W. T. Abbott appearing for the complainant, The Peoria Gas & Electric Company; Mr. Walter Kirk, city attorney, and Judge Winslow Evans appearing for the defendant, The City of Peoria.

Judge Evans, on behalf of the City of Peoria, offers in evidence a certified copy of rule 38, of the circuit court of the United States for the northern district of Illinois.

I. C. PINKNEY, called on behalf of defendant, City of Peoria, bei first duly sworn, deposes and says:

Direct interrogatories by Judge EVANS:

1. State your name, residence and occupation?

A. I. C. Pinkney; No. 1411 North Monroe street, Peoria, Ill. A practicing attorney at law.

2. Were you the special master who took the proof on the issue made by the pleadings in this case and made report on it?

A. Yes sir.

3. You are familiar, then, with the services rendered by the solic itors for the defendant, The City of Peoria, are you not?

A. In so far as such services were before me only.

4. You are familiar with the services that were rendered by Mr Tichenor in this case, are you not, in the taking of the proof and preparing and presenting the case on the whole record to the master?

221 A. No, Judge I could not say I am familiar with what work he did outside of the work that was done by him before me; I have no means of knowing whether he had anything to do with the preparation of any work outside of the hearings or not?

5. From your knowledge of what he did in the case, in the taking of proof and preparing and presenting the case to you as master, and from your knowledge of the questions that were involved, and the necessary investigation that a lawyer would have to make to prepare and present those questions would $2500 be a usual and customary fee for a reputable solicitor in this county and in this southern division of the northern district of Illinois for such services as were rendered by him?

Objected to by complainant as incompetent, immaterial, irrelevant and not a proper element of damage under the pleadings in this case.

A. Judge, I could not answer that question for the reason that I do not know of my own personal knowledge what he said to do with the case outside of his participation in the case before me in the taking of testimony.

6. What would be the usual and customary fee for the services you know he rendered before you?

A. I don't know; I don't know what the usual and customary fees are in this county in the United States court for services of that character.

7. Have you a statement or charge of the time put in by you as master for the city of Peoria?

A. Yes sir; with the exception of the time I put in in the preparation of my final report.

8. How many days were you engaged in taking testimony for the city of Peoria?

Objected to by complainant as immaterial.

A. Including the number of days consumed by the city on
222 the argument of the case before the master, with the number of days spent in taking testimony at the instance of the city of Peoria, I was engaged just 27½ days.

9. Did you render a bill to the city of Peoria for that number of days at $25.00 a day?

Objected to by complainant as incompetent and immaterial.

A. I did.

10. Did the city of Peoria pay you that sum?

Objected to by complainant on same grounds.

A. Yes sir.

11. That was in pursuance of an order of court theretofore entered, was it not?

A. Followed by an order of court thereafter made in that regard. The total amount of my *per diem* for the taking and hearing of testimony on that agreed compensation was $687.50 for which I received a warrant from the city of Peoria for the sum of $678.50, leaving a balance of $9.00 still due on the account unpaid, a fact which I had entirely overlooked.

12. What were your necessary expenses in taking the proof for the city?

Objected to by complainant as incompetent and immaterial.

A. $72.27 all told.

13. Did you render a bill to the city for those expenses?

A. I did, an itemized bill.

14. And the city paid it?

Ans. Yes sir.

15. Have you rendered a bill to the city of Peoria for $500., being one half of the fee fixed and allowed to you by order of the court filed June 8, 1903?

Objected to same grounds as before.

A. Yes sir, I have rendered a bill.

16. Have you received the amount thereof?

223 A. Yes sir, I received the amount about two weeks ago.

Cross interrogatories by Mr. ABBOTT:

1. All these days for which the city was charged for your services as master, you were engaged in the taking of evidence in the case on the issues presented by the pleadings and referred to you and the hearing of argument upon them—is that the fact?

A. That is true, yes sir.

Counsel for complainant objects to all of the foregoing testimony of the witness, I. C. Pinkney, on the ground that it is incompetent, and

immaterial, involving elements of damage not proper to be considered in this proceeding and for the same reasons move the court to exclude it.

THOMAS N. GORMAN, called on behalf of the defendant, The City of Peoria, being first duly sworn, deposes and says:

Direct interrogatories by Judge EVANS:

1. State your name and residence?
A. Thos. N. Gorman; 1020 S. Adams street, Peoria, Ill.
2. What official relation do you occupy to the city of Peoria?
A. I am a member of the city council.
3. How long have you been a member of the city council?
A. About 12 years.
4. Are you acquainted with the matter of the litigation involved in this case?
Ans. Yes sir.
5. Were you present at a conversation with Mr. Mansfield in May last, or about the 1st of May, with reference to his being retained as associate counsel with the city attorney then elect?
224 A. Yes sir.
6. State what that conversation was?

Objected to by complainant as incompetent, immaterial and irrelevant.

A. The conversation was between Mr. Mansfield, the city attorney Mr. Kirk, Mayor Woodruff, Alderman Proctor and myself. Our conversation was with reference to Mr. Mansfield's services in assisting the city attorney and the compensation that he was to receive and the services he was to render. It was agreed and understood that Mr. Mansfield's services to the city attorney would be up and to the time that the case was presented to the court and there was some discussion on the question of fees for such services. Mr. Mansfield said he ought to receive compensation amounting to $1500., but after discussing the question the agreement between the gentlemen I speak of and Mr. Mansfield was that his services were to be paid for at the rate of $1,000, that is $1000., for his services and if there were any outside trips to be taken his expenses would be additional.

Complainant objects to the foregoing answer as incompetent, immaterial, irrelevant and moves the court to exclude it.

7. You have stated that was the agreement and understanding, state as nearly as you can what the parties said there rather than your conclusion as to what the agreement was.

Objected to by complainant as incompetent, immaterial and irrelevant.

A. The fee paid Mr. Tichenor was one of the things talked of; it was considered that the fee paid him was exorbitant and the purpose of the meeting with Mr. Mansfield was that there would be an understanding, which condition did not exist in the Tichenor matter, and that the city council would know something about the probable expense involved in the further litigation of this case.

225 Complainant objects to the foregoing answer as incompetent, immaterial and irrelevant and moves the court to exclude it.

6. Did any one, if so who, ask Mr. Mansfield as to what he would perform the services mentioned for?

Objected to by complainant as incompetent, immaterial and irrelevant.

A. That question was asked by Mayor Woodruff.
9. What did Mr. Man-field reply?

Objected to by complainant same grounds.

A. Finally he replied he would give his services for $1000.
9. Were those present a committee of the city council?
A. The parties present were the finance committee of the city council, the mayor and the city attorney—the meeting being held in the mayor's office.
10. They were acting for the city council in this matter?

Objected to by complainant as leading, suggestive, incompetent and calling for a conclusion.

A. Yes sir, it was by an act of the city council referred to that committee.

Complainant objects to the foregoing answer as incompetent, immaterial, hearsay, not the best evidence and moves the court to exclude it.

12. Did Mr. Mansfield in pursuance of what was said and done there at that time, go on and render the services that were mentioned there as solicitor for the city thereafter?
Ans. Yes sir.

Counsel for complainant objects to all of the foregoing evidence of the witness, T. N. Gorman, both questions and answers, as incompetent, immaterial, irrelevant, and for the further reasons they relate wholly to matters of damage, not proper to be considered in these proceedings and for the same reasons moves the court to exclude his testimony.

226 HENRY MANSFIELD, called on behalf of the defendant, Th City of Peoria, being first duly sworn, deposes and says:

Direct interrogatories by Judge EVANS:

1. State your name, residence and occupation.
A. Henry Mansfield; Peoria, Ill.; attorney at law.
2. Are you an attorney and counselor at law of the circuit cour of the United States for the northern district of Illinois?
A. I am.
3. Were you formerly city attorney of the city of Peoria?
A. I was.
4. Were you city attorney during the progress of litigation, or a part of it, in this case?
Ans. I was.
5. Are you familiar with the services rendered by Mr. Tichenor as associate counsel in this case?
Ans. I am.
6. Were you the city attorney during the time he rendered services as solicitor to the city of Peoria in this case?
Ans. I was.
7. Was it reasonably necessary for you to have assistant counsel in order to properly protect the rights and interests of the city in this case?

Objected to by complainant as incompetent and immaterial.

A. I thought so.
8. What was the general character of the services rendered by Mr. Tichenor as solicitor for the city of Peoria in this case?
A. In deciding upon the various matters of defense, in seeking witnesses and in examining witnesses upon the line of defense that had been mapped out and in looking up and becoming familiar with the law pertaining to the case.
9. Did he also participate in preparing, presenting and arguing the case before the master?
Ans. Yes and before the court.

227 10. Do you know how much he was paid by the city of Peoria for his services as such solicitor?

Objected to by complainant as incompetent and immaterial.

A. I only know so far as I O K'd the bill, that was presented by Mr. Tichenor.
11. That bill was for the sum of $2500?

Objected to same grounds.

A. Yes sir.
12. Was that the usual and customary fee of reputable attorneys in this county and in this southern division of the northern district of Illinois for such services as were rendered by Mr. Tichenor for the city?

Objected to by complainant same grounds.

A. I do not believe I am quite familiar enough with the customary fees charged to answer that question but I will say that in my opinion it was a reasonable fee for the work and services rendered.

Complainant's counsel objects to the foregoing answer as incompetent and moves the court to exclude it.

13. Did you continue as associate counsel with the present city attorney in this case after the expiration of your term as city attorney in May last up to the time and concluding with the hearing before the court?

A. I don't know what you mean by associate counsel; I did all the work in the case when I was connected with it.

14. I will ask you if you continued with the city attorney from the time of the beginning of the present city attorney's term of office until the case was argued and presented to the court?

A. Mr. Kirk at that time was city attorney but he did none of the work connected with the case at all except to prepare the index to the abstract of record.

228 15. Well, you participated in and represented the city as a solicitor in the case?

Ans. I did.

16. Who acted for the city in employing you?

Objected to by complainant as incompetent and immaterial.

A. Well, I don't know; there was a meeting, as I understood it, of the finance committee together with the mayor and city attorney which meeting I attended, and I understood that I was employed by the city through them.

Complainant objects to the foregoing answer as incompetent and immaterial and moves the court to exclude it.

17. Did you have any conversation with them about the first week in May last with regard to the amount of your compensation and the services you were to render? If so state what it was.

A. I did; I was telephoned to and requested to come up to the city hall, and when I got up there I found the mayor, E. N. Woodruff, Thos. N. Gorman, Chas. Proctor and Mr. Kirk in the mayor's office and they took up the matter of engaging me as counsel in the gas case; I don't know the exact words of the conversation that took place there, but I was asked, how much I would charge to conduct the case up to the hearing before the court and I told them that was very hard to determine as I could not determine the length of time it would be before the court would meet; the argument was to be made before the master, however, on or about the first day of June, and the mayor was acquainted with that fact, and he said, "Well, we will give you $1000. to take care of this case and argue it up to

the final hearing" and said, if it only took 20, days that woul
at the rate of $50.00 a day; I said that while the master was to
the arguments on the exceptions at that time that it wou d n
sarily take longer than that time for the court to hear the
and decide it; and I stated that if they wanted me to n
a round sum I would do it for $1500; the mayor said, "We
it takes any longer time than that, we will allow yo
229 reasonable fee in the matter"; it did take longer than t
the time I spent upon the case, with the exception of 7
was from the 8th day of May, 1903, or the day immediately
my engagement by the city at that time, up to the 23rd day of
tember, 1903. I would like to say in this connection with refer
to the testimony of the gentlemen who have testified before me,
it would have been folly upon my part if I had made such arra
ment to afterwards go to work and prepare an abstract of the rec
and also file a written brief in the case when the printers got
sum of over $600. for simply printing that abstract and brief
taking my stenographer's fees out I would not get as much as
printer did.

Complainant objects to the foregoing answer as incompetent,
material and irrelevant, and moves the court to exclude it.

18. What would be a usual and customary fee for a reputable
torney in this county and in this southern division of the north
district of Illinois for such services as were rendered by you in p
suance of the arrangement you had with the finance committee,
mayor and the city attorney?

Objected to by complainant as incompetent and immaterial.

A. As I stated before, I do not consider myself familiar with wh
would be a usual and customary fee to be charged in a case of th
kind, but I believe that a fee of $2500. for the services I rendered
the city would be a reasonable fee.

19. Would $1000. be any more than a usual and customary fee

Objected to by complainant same ground as before.

A. I do not know of any reputable attorney in the city of Peoria,
in the district mentioned, who could do the work which I performe
taking into consideration the length of time I was engaged, tha
would even consider taking the case upon the basis of such a fee
$1000.

230 20. Did you render services as solicitor for the city
Peoria in pursuance of your arrangement with the financ
committee, the mayor and city attorney?

Ans. I did.

Cross interrogatories by Mr. ABBOTT:

**1. At the time Mr. Tichenor came into the case to assist you, th
complainant's evidence in chief was all in, was it not?**

A. Yes sir, it was.

2. And Mr. Tichenor's services began, I presume, with consultations with reference to the policy to be pursued in conducting the defense and securing witnesses to present the city's side of the case?

Ans. Yes sir.

3. And that was followed up by the work of securing witnesses and in their examination before the master?

Ans. Yes, sir, it was.

4. And his services also included work in connection with the rebuttal testimony taken by the complainant?

Ans. It did.

5. And also the preparation of the case for argument before the master and that argument?

Ans. Yes sir.

6. Then it is a fact, is it not, that all the services rendered by Mr. Tichenor were rendered in the preparation for the putting in of evidence on the part of the city and putting in of that evidence and the following of it up to the time of the argument before the master of the city's defense in the case?

A. Yes, I believe that is true.

7. Now, after you came into the case under special employment, after you ceased to be city attorney, the services rendered by you, as you have testified, were in the further carrying on of the case from the time of the making of the master's report, that is, in the preparation of objections to the master's report, the argument thereon, the preparation of exceptions and then the preparation of the case for argument before the court, including the work which you did in the way of dictating, having typewritten and prepared for
231 the printers the abstract?

A. Yes sir, and the brief.

8. And that work I believe you testified was substantially all performed by yourself?

Ans. Yes sir.

Counsel for complainant objects to all of the foregoing testimony of the witness, Henry Mansfield, both questions and answers, on the ground that the same is incompetent, irrelevant and immaterial, relating sole-y to matters of damage not proper to be considered in this proceeding and on the same grounds moves the court to exclude it.

CHARLES S. PROCTOR, called on behalf of the defendant, The City of Peoria, being first duly sworn, deposes and says:

Direct interrogatories by Judge EVANS:

1. State your name, residence and occupation.

A. Chas. S. Proctor; No. 920 Moss Ave., Peoria, Ill.; manufacturer.

2. What official relation, if any, do you occupy to the city of Peoria?

A. Yes, I think so.

35. Were the items of expenses rendered by you to the city and paid by the city to you reasonable and necessary expenses incurred by you in rendering services as solicitor for the city of Peoria in this case which you have already mentioned?

Objected by complainant as immaterial.

A. They were absolutely.

36. Was there any contract in advance between you and the city as to the amount of your fees for your services in behalf of the city in this case?

212 A. No sir, none whatever, the subject was never — until I presented my bill.

37. At whose instance and request in the first place did you render your services as solicitor for the city of Peoria?

Objected to by complainant as immaterial.

A. The city attorney at that time, Henry Mansfield, told me I had been retained to assist in the defense by the city.

39. And your bills as you have mentioned were subsequently allowed by the city council and paid to you?

Objected to by complainant as immaterial.

A. Yes sir.

Cross interrogatories by Mr. IRWIN:

1. I understand that you came into the case some time after the hearing had been commenced?

Ans. Yes sir.

2. All the services that were rendered by you were in the taking of the testimony and on the final hearing of the case on the general merits of the case, were they not?

A. Yes sir on the whole record.

3. Looking after witnesses and the taking of the testimony you took was as to the general issues involved in the case?

A. It pertained to all of the questions involved.

4. But was on the merits of the case as made up by the issues?

A. Yes sir, necessarily so.

Counsel for complainant objects to all of the foregoing testimony of the witness, F. H. Tichenor, both questions and answers, on the ground it is incompetent, immaterial irrelevant and because the matters testified about are not proper elements of damage to be considered in this proceeding and for the same reasons moves the court to exclude said testimony from the record.

213 WALTER H. KIRK, called on behalf of the defendant, The City of Peoria, being first duly sworn, deposes and says:

Direct interrogatories by Judge EVANS:

1. State your name occupation and place of residence.
A. Walter H. Kirk; attorney at law; Peoria, Ill.
2. What, if any, relation do you occupy to the city of Peoria?
A. I am at present city attorney.
3. When did your term as city attorney commence?
A. May, 1903.
4. Did you enter on the discharge of your duties at that time?
A. I did; I think it was the 5th day of May.
5. Had you at that time had any connection with, or knowledge of, the matter involved in this suit?
Ans. No sir.
6. In your judgment, was it necessary at that time to employ assistance for you to reasonably protect the rights and interests of the city in this case?

Objected to by complainant as incompetent an- immaterial.

A. Yes sir.
7. Was an assistant engaged to assist you in representing the city as solicitor in this case from that time on?
Ans. Yes sir.
8. Who was it?
Ans. Henry Mansfield.
9. He was the former city attorney and had been prior to that time engaged in this case had he not?
A. Yes sir, he was my immediate predecessor.
10. How long did he continue in the case?
A. From along about the middle of May, 1903, some time in the fore part or about the middle of May, until the matter was submitted
214 before the court, the exact date of which I do not now recall, but the bill will show when it was argued in this room before Judge Humphrey.
11. Had the master's report at that time been made and filed?
A. The master had made his report known to the attorneys in the case and by courtesy I was requested to be present, I think, on the second day of May, 1903, just before I came into office.
12. Did Mr. Mansfield's services cover the preparation of objections to the report and exceptions to the report before the court and the presentation of those exceptions and argument of the case?
A. Yes sir.
13. Did he also participate in the preparation of the abstract as well as the argument?
Ans. Yes sir.
14. Was a printed argument prepared and filed with the court?
A. Yes sir.
15. Was an oral argument also made?

A. As I remember it, the oral argument was a presentation of the written argument; the written argument was in type-written form, but substantially the same argument, with possibly a few variations therefrom was presented before the court from man-script and later a printed argument was filed and taken by the court.

16. Did Mr. Mansfield continue in the case after that or perform any services after it had been argued and taken under advisement by the court?

Ans. No sir.

17. Did you with any member of the city council meet with and make any arrangement with Mr. Mansfield to assist you as solicitor for the city in this case?

Ans. Yes sir.

18. When was that?

A. I think it was on the 7th or 8th day of May, 1903, following a special meeting of the city council which was held on the 6th of May.

19. Who all were present?

215 A. Mayor E. N. Woodruff, Alderman Chas. D. Proctor, chairman of the finance committee, Alderman Thomas N. Gorman, a member of the finance committee, Mr. Henry Mansfield and myself.

20. What was said between you and Mr. Mansfield at that time about his rendering services and the amount of compensation he should receive therefor?

Objected to by complainant as incompetent, immaterial and irrelevant.

A. Mr. Mansfield was told, in the presence of those whom I have named, that he had been selected to continue in the interests of the city as associate counsel in this gas case and that it was the purpose in having him meet those who were present to have an understanding and an agreement between him and the city with respect to such fees as he should want for his services in carrying the matter forward. And at that time and place Mr. Mansfield agreed to come into the case, be associated with me in it and assist me in taking such further steps as would be necessary—to file objections before the master to his findings and, if necessary, take exceptions thereto and present the same before the court and submit the matter to the court, for a total fee of $1,000.

Counsel for complainant objects to the foregoing answer as incompetent, immaterial, irrelevant and hearsay, the city could not make a contract of that character, and moves the court to exclude it.

21. Just state what Mr. Mansfield said there in that connection not merely your conclusion as to it, but what he said and what was said by the others present.

Objected to by complainant as incompetent, immaterial and irrelevant.

A. Mayor Woodruff, I believe, asked Mr. Mansfield about how many days' time it would require for the services necessary to be performed, and about how much per day it would be worth.

216 I think Mr. Mansfield replied it would be impossible to tell how many days it would require and that he could not submit any proposition or make any agreement with reference to the number of days at so much per day; that he would prefer to make an agreement that should include all the work to be done and to give it the attention necessary to do it. He also added that if it was necessary for him to be to any expenses in being away from Peoria he should expect his incidental traveling expenses in addition while away.

Counsel for complainant objects to the foregoing answer as incompetent, immaterial and irrelevant and moves the court to exclude it.

22. What did Mr. Mansfield say, if anything, as to what he would render his services for, which were yet to be performed, or were proper to be done by him in this case?

Objected to by complainant as incompetent, immaterial, irrelevant and hearsay.

A. He said he would do all that was necessary to do in the matter and submit it to the court, be associated with me in the case for $1,000. and his necessary traveling expenses if it were necessary for him to be away from home.

Counsel for complainant objects to the foregoing answer as incompetent, immaterial and irrelevant and moves the court to exclude it.

23. Did he, in pursuance of that understanding and agreement at that time enter upon the discharge of his duties rendering services to the city of Peoria as solicitor in this case from that time on?

Objected to by complainant as assuming there was an agreement; also as incompetent, immaterial, irrelevant and for the reason the city could not make a contract in that manner unless authorized by the city council.

217 A. Yes sir.

24. Do you know what necessary incidental expenses were incurred by Mr. Mansfield in rendering his services from that time on for the city of Peoria as solicitor in this case?

Objected to by complainant, as incompetent, immaterial, and irrelevant.

A. There were two trips made to Springfield, Ill., the exact dates of which I do not recall, but that was all that was done outside of the city of Peoria.

25. What were his necessary expenses on those trips, if you know?

Objected to by complainant as incompetent, immaterial and irrelevant.

A. My recollection is that the round trip fare from here to Springfield and return is about $3.40 or $3.50; I don't remember just the amount.

26. How long was he at Springfield each time?

Objected to by complainant as immaterial.

A. He left Peoria in the morning between 7 and 8 o'clock and left Springfield on his return after luncheon about 2 or 3 o'clock.

27. About what would be the necessary expenses incurred on each of those trips?

Objected to by complainant as incompetent.

A. Not to exceed a dollar over and above railroad fare.

28. Are you an attorney and counselor at law of the United States circuit court of the northern district of Illinois?

A. Yes sir.

29. Were the services which Mr. Mansfield rendered, after you became city attorney, as associate counsel and solicitor for the city of Peoria in this case, reasonably worth the sum of one thousand dollars?

218 Objected to by complainant as incompetent, immaterial and not a proper element of damage under the pleadings in this case.

A. Yes sir, I think that is a fair and reasonable fee for the services that were necessary to be rendered and which were rendered.

30. Is $1000. the usual and customary fee of reputable solicitors in this county and in the southern division of the northern district of Illinois for such services as rendered by Mr. Mansfield as solicitor for the city of Peoria?

Objected to by complainant same grounds as before.

A. I believe it is. There is one word I want to add that has occurred to me to my answer to a former question, that is, as to what was said at this meeting referred to. Mr. Mansfield was asked in naming a fee for which he would go on with me in the case as associate counsel, to consider the bill the city council had recently paid, viz: $2500. to Mr. Tichenor, who had been associated with him in the case, and to take into consideration the fact that the city council of the city of Peoria would not pay any such fee, that they regarded the fee as excessive and too high; he was also asked to take that into consideration and to further consider the fact he personally had a pride and a desire to win the case and to be connected with it to the end; that he should consider those things; and after it had been discussed back and forth the agreement was made by Mr. Mansfield to which I have testified.

Counsel for complainant objects to the foregoing voluntary statement of the witness as incompetent, immaterial, irrelevant and hearsay.

Cross interrogatories by Mr. ABBOTT:

1. Were all of the services rendered by Mr. Mansfield during
219 the time of his special employment after you became city attorney as you have testified, connected with the preparation of objections to the master's report, arguing those objections before the master, the preparation of exceptions to the master's report and the argument of the whole case before Judge Humphrey—were those the services rendered by him?

A. Those services were rendered and in addition to those the record in this case was, with Mr. Mansfield's co-operation and assistance, abstracted and printed in the form presented here in two volumes and indexed.

2. Then, if I understand you, the services covered by my former question and those that you indicate in your answer thereto comprised all the services rendered by Mr. Mansfield during this period?

A. I think they do.

3. Were there any services rendered by him in the case in any other connection during this time?

A. None except the trips to Springfield I have mentioned.

4. Do you remember what was done on those trips to Springfield in a general way?

A. The first trip to Springfield, I believe, was made upon a notice served by the complainant in this case on the defendant to appear there for the purpose of setting a day by which all exceptions to the master's report should be on file. There may have been some other minor questions presented by counsel to the court in chambers, but I believe that was the main purpose of that trip; Mr. Mansfield and myself were both there in the interests of the city. The second trip, which I believe was along in the early part of July—I may be mistaken as to just the time but it was in the beginning of the summer—was for the purpose of having the court set a time when counsel in this case could be heard before the court.

220 5. At both of those occasions, either the master, or counsel for complainant, were the moving parties and you were there in defense of the city's interests?

A. As I recollect it, we were. I know now of no occasion the city had to be there.

Counsel for complainant objects to all of the foregoing testimony of the witness Walter H. Kirk, both questions and answers, on the ground it is incompetent, immaterial, irrelevant and because the matters testified about are not proper elements of damage to be considered in this proceeding and for the same reasons move- the court to exclude the same from the record.

not able at this time to state definitely as to the number of times I went there with reference to this particular case. I think applications for an injunction were made upon both bills at the same time and that I attended objecting to the issuance of the injunction; the court ordered the injunction and I then filed an answer in one case and a demurrer in the other. I know I attended at Chicago at least twice on this particular case. When my bill was made out by me, it was made out with reference to the two cases and I cannot now recall particularly the services I performed in each individual case. My charges for the entire services for which I received compensation, including expenses, was $360. and I think about half of those services were performed in this case of The Peoria Gas & Electric Company against The City of Peoria.

Complainant objects to the foregoing answer as incompetent and immaterial and moves the court to exclude it.

15. Did the city pay you the amount of the bill so rendered?

Objected to as incompetent and immaterial?

A. They paid me $360., yes sir.

16. You say one half of that was for services rendered in this case?

A. There was no distinction made between the services in this case and the services in the other case but I think about one half of the services were rendered in this case.

17. Is $180. a usual and customary fee for such services, or would it be for a reputable lawyer in this county and in this southern division of the northern district of Illinois?

Objected to by complainant as incompetent and immaterial.

241 A. It would be a very reasonable fee and I think probably considerably less than the usual and customary fee for services rendered in that case. I will say I — ashamed of the bill when I looked at it.

Counsel for complainant objects to all the foregoing testimony of the witness, William Jack, as incompetent, immaterial and irrelevant, relating wholly to a question of expense not proper to be considered in this proceeding and for the same reasons move the court to exclude it.

This was all the evidence in the case.

" Filed Mar. 9 1904.

MARSHALL E. SAMPSELL, *Clerk.*"

242 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS AND ELECTRIC COMPANY
vs.
CITY OF PEORIA. } In Chancery.

Now comes the complainant, Peoria Gas and Electric Company, by its solicitors, and in addition to such specific objections as it may hereafter make to any questions propounded to witnesses and their respective answers thereto, objects to the taking of testimony and to any and all testimony that may be offered by the defendant as to any damages to be assessed against the complainant herein arising upon the suggestions of damages filed by said defendant in this proceeding, for the following reasons, namely:

1st. That said defendant is not entitled to have damages assessed in this proceeding, as sought by the suggestions of damages on file herein.

2nd. That there is no liability against the complainant in this proceeding for damages arising under said causes stated in defendant's suggestions of damages on file herein,

3rd. That said suggestions of damages are made up wholly of damages alleged to have been sustained by the defendant which are not proper elements of damage to be considered under the record in this case.

4th. That it appears from said suggestions of damages that the attorney's services rendered and other expenses incurred, as claimed in said suggestions of damages, were each and all rendered and incurred in the general defense of the suit.

243 5th. That it does not ap-ear that defendant suffered any damage from the issuance of the preliminary injunction herein.

6th. That any testimony offered in support of defendant's suggestions of damages on file herein would be incompetent, immaterial and irrelevant.

PEORIA GAS AND ELECTRIC COMPANY,
By E. C. RITSHER,
W. T. ABBOTT,
W. T. IRWIN, *Its Solicitors.*

Endorsed: "Filed Feb. 24, 1904 F. C. Howe, master."
Endorsed: "Filed Mar. 9, 1904. Marshall E. Sampsell, clerk."

244 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS AND ELECTRIC COMPANY
vs.
CITY OF PEORIA. } In Chancery.

Now comes the complainant, Peoria Gas and Electric Company, by its solicitors, and moves the master, on the suggestions of damages herein filed, to report to the court that no damages have been sustained by the defendant, as alleged in its suggestions of damages, under the record in this case, and that no competent evidence can be offered by the defendant in support of any alleged damages arising under its suggestions of damages on file in this proceeding.

PEORIA GAS AND ELECTRIC COMPANY,
By E. C. RITSHER,
W. T. ABBOTT,
W. T. IRWIN, *Its Solicitors.*

Endorsed: "Filed Feb. 24, 1904, F. C. Howe, master."
Endorsed: "Filed Mar. 9, 1904. Marshall E. Sampsell, clerk."

245 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS AND ELECTRIC COMPANY
vs.
CITY OF PEORIA. } In Chancery.

Now comes the complainant in the above entitled cause, Peoria Gas and Electric Company, by its solicitors, and moves the court for a rule upon the defendant to file herein forthwith and prior to proceeding to take the testimony upon the suggestions of damages referred to the master herein, a bill of particulars setting forth in detail the damages alleged to have been sustained by the defendant, as alleged in its several suggestions of damages on file herein, for the following reasons, namely:—

First. That this complainant is entitled to have exhibited a bill of particulars showing the several items and sums claimed as damages by the defendant in this proceeding.

Second. That the complainant cannot safely proceed to the taking of testimony herein upon said suggestions of damages without being first informed, by way of a bill of particulars, of the several items claimed by said defendant under said several suggestions of damages on file herein.

Third. That the complainant is entitled to have a bill of partic-

ulars exhibited herein prior to proceeding to take testimony
246 upon said suggestions of damages under the rules and regulations governing this court.

Fourth. That said suggestions of damages are indefinite and uncertain and do not sufficiently apprise the complainant of the damages sought thereby to be assessed against it.

PEORIA GAS AND ELECTRIC COMPANY,
By RITSHER, MONTGOMERY, HART & ABBOTT,
JACK, IRWIN, JACK & DANFORTH,
Its Solicitors.

Endorsed: "Filed Feb. 24, 1904, F. C. Howe, master."
Endorsed: "Filed Mar. 9, 1904. Marshall E. Sampsell, clerk."

247 In the Circuit Court of the United States for the Northern District of Illinois, Southern Division.

TUESDAY, *February* 9, *A. D.* 1904.

Present: Honorable J. Otis Humphrey, district judge.

PEORIA GAS AND ELECTRIC COMPANY, Complainant, *vs.* CITY OF PEORIA, Defendant.	288.	In Chancery. For Injunction.

This cause coming on to be heard at this term, having heretofore been presented and argued by counsel and thereupon upon consideration thereof, it is ordered, adjudged and decreed that the exceptions made and filed herein on behalf of the defendant City of Peoria against the failure of the special master I. C. Pinckney to find in his report on file herein that the complainant, prior to the commencement of this suit, had formed, entered into and become a party to an illegal and unlawful combination, pool, trust, combination or arrangement with the Peoria Gas Light and Coke Company (the old gas company) should be and the same is hereby sustained.

And the defendant by leave of court files herein its suggestions of damages and the court being of the opinion that said injunction was wrongfully sued out, said suggestions of damages by the defendant are hereby referred to F. C. Howe, master in chancery of this court to take proof as to the damages sustained by the defendant by reason of such wrongful suing out of such writ of injunction and to report the same together with his conclusions thereupon for the information and advice of the court.

Endorsed: "Filed Mar. 9, 1904, Marshall E. Sampsell, clerk."

248 In the Circuit Court of the United States of America for the Northern District of Illinois, Southern Division.

I, Marshall E. Sampsell, clerk of the circuit court of the United States of America, for the northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the order of reference entered in said court on the ninth day of February A. D. 1904, in the cause wherein The Peoria Gas and Electric Company is complainant and The City of Peoria is defendant as the same appears from the original records now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Peoria, in said district and division, this ninth day of February A. D. 1904.

{ Seal of Circuit Court U. S., Northern Dist. Illinois, Southern Division, 1887. }

MARSHALL E. SAMPSELL, *Clerk*,
By F. C. HOWE, *Ch. Dep.*

249 And afterwards on to-wit the twenty-third day of March, A. D. 1904, there was filed in the office of the clerk of said court in said cause, a petition for rehearing by complainant, which said petition is in the words and figures following, to-wit:

250 In the Circuit Court of the United States for the Northern District of Illinois, Southern Division. In Chancery.

PEORIA GAS AND ELECTRIC COMPANY, Complainant,
vs.
CITY OF PEORIA, Defendant. } No. 288.

Petition for Rehearing by Complainant.

To the Hon. J. Otis Humphrey, judge of said court:

Your petitioner, The Peoria Gas and Electric Company, complainant herein, respectfully prays this honorable court to grant a rehearing in the above cause and refers in support thereof to the points hereto attached and made part hereof, which it is respectfully submitted have been overlooked or misapprehended by the court.

W. T. ABBOTT,
W. T. IRWIN,
E. C. RITSHER,
Solicitors for Complainant.

251 *Points in Support of Petition for Rehearing.*

The opinion of the court.

The court, in its opinion hereto attached and made a part hereof, (Exhibit A), says:

"The Illinois anti-trust law, as construed by the supreme court of Illinois, leaves no doubt in my mind that this record shows on the part of this complainant a violation of that act in the manipulation of the stock of both companies, the use of the mains of both companies, the performance by complainant's servants of the business of both companies, the simultaneous agreement of rates between the officers of both companies, and the contract in evidence between the two companies—all lead to the inevitable conclusion that there was an understanding between complainant and the old company such as the Illinois act prohibits. A court of equity will not assist complainant to reap the fruits of such unlawful combination."

I.

The court has misapprehended the facts as disclosed by the record.

a. The evidence shows no "manipulation of the stock of both companies."

Complainant's Brief 4, pp. 38 & 67.

252 *b.* There is nothing in the record which warrants the charge of "the use of the mains of both companies."

Complainant's Brief 4, pp. 37 & 38.

c. The "performing by complainant's servants of the business of both companies," consisted in the rendering of service for a limited period of time as a business accomm-dation.

Complainant's Brief 4, p. 39.

d. As to "the simultaneous agreement of rates between the officers of both companies," the record discloses nothing which warrants the charge that such agreement, if any existed, was unlawful, or that there was any agreement between the companies to maintain the prices so made.

Moreover, as a matter of fact, the rates of the two companies did not remain the same except for a period of about ninety days.

Complainant's Brief 4, p. 39 to p. 48.

United States *vs.* Trans-Missouri Freight Association, circuit court of appeals, 8th dist., 58 Fed. Rep. 58.

e. "The contract in evidence between the two companies" was entirely lawful.

Complainant's Brief 4, p. 39.

Complainant's Brief 1, pp. 38 & 39.

253 II.

The court misapprehended the law applicable to this case.

1. The doctrine that "he who comes into equity must come with clean hands" is subject to well-defined limitations, and under the limitations of that doctrine the maxim is not applicable to the facts in this case, because

a. The illegal acts charged in the court's opinion are not connected with the matter in litigation so that they in any manner affect the equitable relations subsisting between the two parties at the time the suit was commenced, and

b. All such acts, except the circumstance of the change of price on August 1, 1900, took place after the commencement of the suit.

Pomeroy's Equity Jurisprudence, sec. 399.
Lewis appeal, 67 Penna. St., 166.
Complainant's Brief 2, pp. 110–116.
Liverpool & London etc. Ms. Co. *vs.* Clunie (C. C. Co.) 88 Fed. 160.

2. If complainant is guilty of the illegal acts charged in the court's opinion, such fact should be determined only in a direct proceeding, by the proper governmental authority, and not in a collateral attack.

New Memphis Gas Light & Coke Co. *vs.* City of Memphis, 72 Fed. Rep., 952.
Complainant's Brief 2, pp. 104–110, and
Complainant's Brief 4, pp. 16–20.

254 The Federal courts have repeatedly held that the question of the illegality of corporate acts cannot be raised in a collateral proceeding. Some of these decisions have been rendered in cases where it was attempted to show collaterally illegal acts of the complainant under this same Illinois anti-trust statute.

La Fayette Bridge Co. *vs.* Streator, 105 Fed., 729.
Connolly *vs.* Union Sewer Pipe Co. 184 U. S. 540.

3. The Illinois anti-trust act mentioned by the court has been declared by the United States Supreme Court to be in conflict with the Federal Constitution and void.

Connolly *vs.* Union Sewer Pipe Co., 184 U. S., 540.

Cited with approval by the supreme court of Illinois in
Kellyville Coal Co. *vs.* Harrier 207. Ill., 629.

Complainant respectfully submits that upon the points stated it is entitled to a re-hearing and that the opinion heretofore rendered

herein should be withdrawn and a decree entered in conformity with the prayer of the complainant's bill.

Respectfully submitted,

E. C. RITSHER,
W. T. IRWIN,
W. T. ABBOTT,
Solicitors for Complainant.

I certify that in my opinion the foregoing petition for rehearing of Peoria Gas and Electric Company, complainant, is well founded in law and proper to be filed in the above cause.

E. C. RITSHER,
Solicitor for Complainant.

255 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Edward C. Ritsher, being first duly sworn, on oath states that he is the solicitor of Peoria Gas and Electric Company, and that he has read the foregoing petition for rehearing of complainant in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceeding therein.

[NOTARIAL SEAL.] EDWARD C. RITSHER.

Subscribed and sworn to before me this 23rd day of March A. D. 1904

ROBERT F. JACK,
Notary Public.

256 EXHIBIT A.

In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS AND ELECTRIC COMPANY }
vs. }
CITY OF PEORIA. }

Opinion by Judge J. Otis Humphrey, February 8, 1904.

This matter comes up on exceptions to the master's report. I believe both complainant and defendant have filed exceptions to certain affirmative holdings of the master, and both parties have also filed exceptions because the master failed to hold—omitted to hold—upon certain other questions. Without undertaking to remember or specify the facts about this long list of exceptions, this record shows that complainant's bill was filed on September 18, 1900, seeking to enjoin the enforcement of an ordinance of the city of Peoria fixing the maximum rate for gas, which ordinance had been passed on the 4th day of the same month,—September, 1900.

A. Alderman for the fifth ward in the city council.

3. How long have you been a member of the city council?

A. About four years.

4. Were you present at a conversation in the fore part of last May with Mr. Mansfield and others concerning his retention as solicitor for the city of Peoria in this case?

A. Yes sir.

5. Who all were present at that time?

232 A. Walter H. Kirk, the present city attorney, Mayor E. N. Woodruff, Alderman Thos. N. Gorman, Henry Mansfield and myself.

6. Those present of the city officials were a committee of the city council, were they not?

A. The finance committee of the city council.

7. What was your conversation with Mr. Mansfield on that occasion?

Objected to by complainant as incompetent and immaterial.

A. The committee, at the direction of the city council, had called in Mr. Mansfield to arrive at an understanding with him as to what part he would take in assisting Mr. Kirk, the city attorney, in continuing the gas case for the city, and it was largely a matter of understanding as to what compensation Mr. Mansfield should receive for such services. Mr. Mansfield said first he thought a fee of $1500. was what he should receive; there was some objections to that amount and Mr. Mansfield finally agreed to accept the sum of $1000. for his services exclusive of traveling expenses.

Complainant objects to the foregoing answer as incompetent and immaterial and moves the court to exclude it.

8. What did Mr. Mansfield say about it—you have stated that he agreed so and so—I ask you to say now what he said as to what compensation he would accept to act as solicitor for the city in the case?

Objected to by complainant as incompetent and immaterial.

A. He said he would do it for the sum of $1000.

Complainant objects to the answer as incompetent and immaterial and moves the court to exclude it.

9. Did he perform services as solicitor in pursuance of the conversation and arrangement entered into at the time?

Objected to by complainant as incompetent and calling for a conclusion.

233 A. So far as I know, he did.

Counsel for complainant objects to all of the foregoing evidence of the witness, Charles S. Proctor, both questions and answers, on

the ground that the same is incompetent, immaterial and irrelevant, relating wholly to matters of damage not proper to be considered in this proceeding, and on the same grounds move the court to exclude it.

EDWARD N. WOODRUFF, called on behalf of defendant, The City of Peoria, being first duly sworn, deposes and says:

Direct interrogatories by Judge EVANS:

1. State your name, residence and occupation.

A. E. N. Woodruff; No. 1026 N. Jefferson Ave., Peoria, Ill. I am in the ice business.

2. What official relation, if any, do you occupy to the city of Peoria?

Ans. Mayor.

3. How long have you occupied that position?

A. Since May 5th, 1903.

4. Were you present at this conversation with Mr. Mansfield about the time you became mayor?

Ans. Yes sir.

5. State who were present and what the conversation was?

Objected to by complainant as incompetent and immaterial.

A. There were present Alderman Gorman, Alderman Proctor, City Attorney Kirk, Mr. Mansfield and myself. Alderman Gorman and Proctor represented the finance committee, Mr. Kirk the law department, Mr. Mansfield represented himself and I represented the city as mayor. They came into my office with the proposition of employing an associate attorney for which the finance committee had been at a special meeting of the council empowered to employ, to assist Mr. Kirk in the further prosecution of the gas case.

234 The question the committee had to deal with was the question of pay. Mr. Mansfield offered to handle the case up to Judge Humphrey's court, that is as nearly as I can explain it, for the sum of $1500.; the matter seemed finally up to me and I simply told the committee and Mr. Mansfield that I felt I could not reasonable sign a voucher for over $1000 for that service; that while I had no right to put an estimate on a man's capacity or ability as an attorney I thought that was as much as the city should pay; Mr. Mansfield raised the question that it might take some six seven or eight months and I said I felt the city was able and willing to pay for services rendered it and if it seemed necessary and right later the city would certainly be willing to pay its part but that was a matter which would be adjusted later if anything was done with it. The price agreed on for Mr. Mansfield was $1000. to take the case to Judge Humphrey's court.

Complainant's counsel objects to the foregoing answer as incompetent and immaterial, and moves the court to exclude it.

6. You say the price agreed on was $1000., state just what Mr. Mansfield said as to whether he would do the work for $1000. as indicated in your statement to him?

Objected to as incompetent and immaterial.

A. He expressed a willingness to handle the case for that amount.

7. What did he say—you say he expressed a willingness—did he say he would or would not?

Objected to as incompetent and immaterial.

A. He said he would.

235 Counsel for plaintiff objects to all of the foregoing testimony of the witness, E. N. Woodruff, both questions and answers as incompetent, immaterial, irrelevant and as relating to expenses and damages which are not proper for consideration in this proceeding and for the same reasons move the court to exclude it.

CHARLES P. WATSON, called on behalf of the defendant, The City of Peoria, being first duly sworn, deposes and says:

Direct interrogatories by Judge EVANS:

1. State your name, occupation and place of residence.

A. Chas. P. Watson; stenographer, Peoria, Ill.

2. How long have you been engaged in the profession of stenographer?

Ans. 32 years.

3. Did you report the evidence as stenographer for the respective parties in this suit?

Ans. I did.

4. Did you do so under the directions of the special master to whom the case was referred?

Ans. I did.

5. Did you make out and render bills for your services as stenographer to the city of Peoria for the taking of its evidence in this case and your necessary expenses incurred in so doing?

A. I did.

6. Were those bills all approved by the master to whom this case was referred?

Ans. Yes sir, with the exception of the copies furnished the city.

7. For how much were your bills rendered against the city for the taking of its testimony and writing the same out for the master?

Objected to by complainant as incompetent and immaterial, calling for expenses and damages not proper to be considered in this proceeding.

236 A. My bill for services for taking the testimony on behalf of the city including my *per diem* and expenses attending the taking of the same amounted to $526.72. My bills against the city for copies of the testimony furnished it amounted to $396.13.

Complainant objects to the foregoing answer as incompetent and immaterial and moves the court to exclude it.

8. Were those the usual and customary fees of stenographers for the taking of such evidence?

Objected to by complainant as incompetent and immaterial.

A. Yes sir, less than the fees allowed in the United States court for taking testimony.

9. How much per 100 words did you charge the city for this testimony and how much for attendance?

A. $5.00 per day for attendance and 15 cents per 100 words for the evidence.

10. How much of your bill was for the transcribing of the evidence on behalf of the city exclusive of the expense attending upon it?

Objected to by complainant as incompetent and immaterial.

A. $352.70.

11. How many days did you attend the taking of testimony at $5.00 per day?

Objected to by complainant same grounds.

A. 20 days—$100

12. And what was the total amount of your expenses on behalf of the city?

Objected to same grounds.

A. $74.02

13. Were those bills all paid you by the city?

Objected to same grounds.

A. They were.

237 Cross examination by Mr. ABBOTT:

1. All this time you were employed in attending before the master and in writing out the testimony afterwards was with reference to testimony taken before the master by the city in its defense of the general case?

Ans. It was.

2. What portion of the services, to which you have testified, was for transcribing the evidence for the record and what portion for the copies which you furnished to the city attorney at his request?

A. My *per diem*, expenses and bills for writing out evidence for

the record amounted to $526.72; my bills for copies of the evidence furnished the city amounted to $396.13.

Counsel for complainant objects to all the testimony of the foregoing witness, Chas. P. Watson, both questions and answers thereto, as incompetent, immaterial, irrelevant, relating to expenses and damages which are not proper for consideration in this proceeding and for the reasons moves the court to exclude it.

WALTER H. KIRK, recalled on behalf of the defendant, The City of Peoria, deposes and says:

Direct interrogatories by Judge EVANS:

1. Were you compelled to make any trips to Springfield as city attorney in this case since your induction into office?
A. Yes sir, as I testified on my former examination, I made two trips to Springfield since I have been in office.
2. What necessary expenses did you incur in making those two trips?

Objected to by complainant as incompetent and immaterial.

238 A. The necessary railroad fare which amounted on each trip to $3.42 making a total of $6.84.
3. Did you render bills to the city for those items of expense?
A. Yes, sir.

Cross examination by Mr. ABBOTT:

1. The two trips to Springfield which occasioned these expenses one was on the occasion of an application by complainant to set date at which the exceptions would be heard and the other, as state by Judge Pinkney, the special master, was when he made applica tion to the court to fix his compensation for making his report?
Ans. Yes sir, those were the two trips.

Counsel for complainant objects to the testimony of this witne as incompetent, immaterial and irrelevant, relating wholly to question of expense no- proper to be considered in this proceedin and for the same reason move- the court to exclude it.

WILLIAM JACK, called on behalf of defendant, The City of Peori being first duly sworn, deposes and says:

Direct interrogatories by Judge EVANS:

1. State your name, residence and profession.
A. Wm. Jack; Peoria, Ill.; attorney at law.
2. How long have you been an attorney at law?

Ans. 38 years.

3. Are you an attorney and counselor at law of the United States circuit court of the northern district of Illinois?

A. Yes, sir.

4. How long have you been such?

A. Oh, since before the Chicago fire; I was associated with Judge Wead from the year 1866 until about 1872 and during that time I was admitted to practice in the United States courts.

239 5. Were you acting for a time as solicitor for the city of Peoria in this case associated with the city attorney?

Ans. Yes sir.

6. Your firm was formerly Jack & Tichenor, was it not?

A. Yes sir.

7. And you were a member of the firm of Jack & Tichenor at the time you were a solicitor in this case?

Ans. Yes sir.

8. At what stage of the proceedings in this suit did you represent the city?

Ans. Immediately after the bill was filed.

9. Was it such a case and of such a character it was reasonably necessary that the city attorney should have assistance and associate counsel?

Objected to by complainant as incompetent and immaterial.

A. I think so, sir.

10. Who was the city attorney at that time?

Ans. Wm. V. Tefft.

11. What services as solicitor did you render in this case for the city of Peoria?

A. I filed an answer in this case. I was employed in two cases, the Peoria Gas & Electric Co. case and the Peoria Gas Light & Coke Co. case, and in the one case I filed the demurrer and in the other case I filed an answer. I see by looking at the files, and it is also my best recollection, that in this case I filed an answer in the first instance.

12. Did you make any preparation by way of examining and considering the law in this case previous to filing the answer?

A. Yes sir, I did in the two cases; they were practically the same as they presented themselves to me at that time.

13. Did you prepare any brief with reference to the matters involved in this case?

Ans. Yes sir.

14. What bills did you render to the city for your services as such solicitor in this case?

240 Objected to by complainant as incompetent and immaterial.

A. I rendered no separate bill in this particular case except for filing the answer. I went to Chicago a number of times, but I am

271 And afterwards on the same day to-wit the twenty-sixth day of April, A. D. 1904, there was filed in the office of the clerk of said court in said cause assignment of errors, which said assignment is in the words and figures following to-wit:—

272 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS AND ELECTRIC COMPANY *vs.* CITY OF PEORIA. } In Chancery. For Injunction, etc.

Assignment of Errors.

Now comes the complainant and files the following assignment of errors upon which it will rely in its appeal from the decree made by this honorable court on the twenty-fourth day of March, A. D. 1904, in the above entitled cause:

1. The United States circuit court in and for the northern district of Illinois, southern division, erred in dismissing the complainant's bill of complaint as amended in the above entitled cause.

2 The court erred in dismissing said suit and entering a final decree therein in favor of the said city of Peoria and against the said Peoria Gas and Electric Company.

3. The court erred in dismissing the complainant's bill of complaint as amended in manner and form as shown by the record of said suit and proceedings.

273 4. The court erred in refusing to grant the complainant the relief asked and prayed for in and by said complainant's bill of complaint as amended.

5. The court erred in refusing to enter a decree in favor of complainant in accordance with the prayer of the bill of complaint as amended.

6. The court erred in not taking cognizance as a court of equity of the subject matter of the bill of complaint as amended.

7. The court erred in holding that complainant was not entitled to equitable relief.

8. The court erred in sustaining the exceptions, or any of them, of defendant to the report of the special master appointed herein by agreement and stipulation of the parties.

9. The court erred in rendering its opinion and in making the findings as same appear therein. (Opinion rendered February 8th, 1904, and filed March 24th, 1904.)

10. The court erred in holding in his said opinion that "the Illinois anti-trust law as construed by the supreme court of Illinois leaves no doubt in my mind that this record shows on the part of this complainant a violation of that act in the manipulation of the stock of both companies, the use of the mains of both companies,

the performing by complainant's servants of the business of both companies, the simultaneous agreement of rates between the officers of both companies, and the contract in evidence between the two companies, all lead to the inevitable conclusion that there was an understanding between complainant and the old company such as the Illinois act prohibits.

274 A court of equity will not assist complainant to reap the fruits of such unlawful combination. The exception on the part of the city to that part of the master's report which omits to find in accordance with these views will be sustained."

11. The court erred in its construction of the anti-trust act of the State of Illinois in applying it to the facts in this case in any manner whatsoever under the pleadings in this case.

12. The court erred in not holding that if applicable in any way to the facts in this case, said anti-trust act of the State of Illinois is in conflict withand in violation of the provisions of the Constitution of the United States and the amendments thereto.

13. The court erred in holding that the matters and things set up in defendant's answer, and such of its exceptions to the special master's report as were sustained by the court, were proper matters of defense in this suit.

14. The court erred in allowing the alleged illegal agreement or combination between complainant and the Peoria Gas Light and Coke Company to be made a defense to complainant's bill as amended wherein it was sought to enjoin the defendant, The City of Peoria, from enforcing an ordinance which would deprive complainant of its property, contrary to the provisions of the Federal Constitution.

15. The court erred in permitting a collateral attack to be made upon the rights of complainant as set up in complainant'- bill as amended and supported by the evidence and the findings of the special master.

275 16. The court erred in not overruling defendant's exceptions to the findings of fact as the same were made in the report of the special master, appointed by agreement of the parties.

17. The court erred in not overruling all of defendant's exceptions to the conclusions of law found by the special master in his report.

18. The court erred in making the order of February 9th, 1904, in which he ordered, adjudged and decreed "that the exceptions made and filed herein on behalf of the defendant, City of Peoria, against the failure of the special master, I. C. Pinckney, to find in his report on file herein that the complainant prior to the commencement of this suit had formed, entered into and become a party to an illegal and unlawful combination, pool, trust, combination or agreement with the Peoria Gas Light and Coke Company, (the old gas company,) should be and the same is hereby sustained."

19. The court further erred in making the order of February 9th, 1904, in which, after making the foregoing finding, he referred the case to the master in chancery to take evidence as to the damages

sustained by the defendant by reason of the wrongful suing — of the writ of injunction.

20. The court erred in not sustaining certain exceptions, and each of them, by complainant to the special master's report, to-wit: the first, second, fourth and fifth exceptions to the conclusions of law of the special master.

21. The court erred in not confirming the findings of fact made by the special master in his report.

276 22. The court erred in not confirming the report of the special master after amending the same by sustaining complainant's exceptions as follows, to-wit: the first, second, fourth and fifth exceptions to the conclusions of law of the special master and each of them.

23. The court erred in not rendering an opinion and entering a decree confirming the report of the special master after amending the same by sustaining complainant's exceptions one, two, four and five, and each of them, to the conclusions of law of the special master.

24. The court erred in holding in its final decree "that the complainant unlawfully entered into a combination, agreement or understanding with the Peoria Gas Light and Coke Company (another corporation organized and doing business under the laws of the State of Illinois and engaged in the business of furnishing gas to the citizens of defendant, The City of Peoria, in competition with the said complainant) to regulate or fix the price at which gas should be furnished the people and citizens of the defendant, The City of Peoria, by the complainant and said The Peoria Gas Light and Coke Company, contrary to and in violation of the statute of the State of Illinois approved June 11, 1891 and in force July 1, 1891": such statute not having been pleaded in defendant's answer, no evidence having been introduced or offered under it, it not having been made the basis of any of the defendant's exceptions to the report of the special master, not having been considered by the court in rendering its opinion of February 8th, 1904 nor in the order of the court on February 9th, 1904.

25. The court erred in finding in its final decree that the complainant unlawfully entered into a combination, agreement or understanding with the Peoria Gas Light and Coke Company * * * to regulate or fix the price at which gas should be furnished the people and citizens of the defendant, such holding not

277 being warranted by the evidence, nor by the exceptions by defendant to the report of the special master, nor by the findings of the court in its opinion of February 8th, 1904, nor by its order of February 9th.

26. The court erred in allowing defendant to withdraw its suggestions of damages on the dissolution of the injunction after the same had been referred to the master to take evidence and the master had filed his report and had found therein that The City of Peoria, the

defendant, has sustained no damages by reason of the suing out of the injunction in this cause.

27. The court erred in taxing the costs of the case in including the sum of $606.00 paid by the defendant for printing *and* abstract of the evidence, the defendant not having complied with the law and the rules of court as to printing such abstract.

28. The court erred in not sustaining the report of the special master and in not entering a decree making perpetual the preliminary injunction gr*a*nted September 4th, 1900.

29. The court erred in holding that the collateral matters set up in the answer of defendant and its exceptions to the special master's report constituted any defense to the matters averred in complainant's bill of complaint as amended, and in refusing and neglecting as a court of equity to take cognizance of the case as disclosed by complainant's bill of complaint as amended, and the evidence in support thereof, and the report of the special master herein, and instead of doing so, dismissing complainant's bill.

30. The court erred in denying to complai-ant the relief granted to it by the fifth amendment to the Constitution of the United States as prayed for in said bill of complaint as amended, and to which the special master found that it was entitled.

278 31. The court erred in denying to complainant the relief granted to it by the fourteenth amendment to the Constitution of the United States as prayed for in said bill of complaint as amended, and to which the special master found it was entitled.

32. The court erred in sustaining defendant's exceptions to the report of the special master and in neglecting and refusing to confirm the said report except so far as exceptions were taken to the conclusions of law therein by the complainant and thereby denying to complainant the protection afforded it by the Constitution of the United States and the amendments thereto, the right to such protection being prayed for in said bill of complaint as amended and allowed by the special master.

33. The court erred in not holding that the ordinance of the city of Peoria in controversy in this case is in conflict with and in violation of the provisions of the fifth and fourteenth amendments of the Constitution of the United States, in that by the said ordinance, as appears from the evidence and from the report and findings of the special master, the complainant is, *first*, deprived of property without due process of law; *second*, deprived of and denied the equal protection of the law, and *third*, that its private property is taken thereby for public use without just compensation.

34. The court erred in not holding under the evidence in this case and the report of the special master, that by the enforcement of the ordinance of the city of Peoria sought to be enjoined by the bill as amended in this case, the complainant would be deprived of property without due process of law, would be denied the equal protection of the law, and that its private property would be taken for public use without just compensation.

35. The court erred in denying the petition of complainant for a re-hearing in this cause.

279 36. The court erred in dismissing complainant's bill for want of equity on the ground that complainant had violated the Illinois anti-trust act of 1891, such act not having been specially pleaded in defendant's answer, and complainant not having been apprised by said answer, nor by and subsequent proceedings in the case that the defendant claimed the acts averred in said answer were in violation of said act.

37. The court erred in dismissing complainant's bill for want of equity on the ground that complainant had violated the Illinois anti-trust act of 1891; inasmuch as the said act provided a new and different remedy from that given at common law, and it was the duty of the defendant to plead the same in an appropriate manner if any decision in the case was to be based thereon.

38. The court erred in admitting any evidence (complainant having specifically objected thereto) going to the question of the alleged illegal combination or understanding between complainant and the Peoria Gas Light and Coke Company, as such controversy was and is wholly collateral to and in no manner connected with the case made and the relief sought by the complainant's bill.

39. The court erred in making and entering its final decree in this cause.

In order that the foregoing assignment of errors may be and appear of record, the complainant presents the same to the court and prays that such disposition be made thereof as in accordance with the law and the statutes of the United States is in such cases

280 made and provided, and complainant prays a reversal of the decree of dismissal made and entered by said court in this cause, and that the same be remanded with directions to the said circuit court to enter a decree in accordance with the prayer of the bill of complaint as amended, and the report of the special master (except so far as exceptions were taken by complainant to the conclusions of law therein).

EDWARD C. RITSHER,
WILLIAM T. ABBOTT,
WILLIAM T. IRWIN,
Solicitors for Complainant.

Endorsed: "Filed Apri- 26, 1904 Marshall E. Sampsell, clerk."

281 And afterwards on the same day to-wit the twenty-sixth day of April, A. D. 1904, there was filed in the office of the clerk of said court in said cause, a bond on appeal, which said bond is in the words and figures following, to-wit:—

282 Know all men by these presents, that, we Peoria Gas and Electric Company, a corporation, organized and existing under the laws of the State of Illinois, as principal, and the United States Fidelity and Guaranty Company, a corporation organized and existing under the laws of the State of Maryland and authorized to act as surety by the laws of the State of Illinois, as surety are held

and firmly bound unto the City of Peoria in the penal sum od one hundred and fifty thousand dollars ($150,000.00) lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves and our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 25th day of April, in the year of our Lord one thousand nine hundred and four.

Whereas, lately, at a session of the circuit court of the United States, for the northern district of Illinois, southern division, in a suit pending in said court between Peoria Gas and Electric Company, complainant, and The City of Peoria, defendant, a decree was rendered dismissing the bill of complaint filed in said suit for want of equity, and the said Peoria Gas and Electric Company having obtained from said court an order allowing an appeal to the Supreme Court of the United States to reverse the decree so rendered in the aforesaid suit, and a citation directed to the said City of Peoria is about to be issued, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington within 30 days from the date hereof;

283 Now the condition of the above obligation is such that if the said Peoria Gas and Electric Company shall prosecute its said appeal to effect, and shall well and truly pay and refund to the said City of Peoria for the use of such of the inhabitants thereof as are consumers of gas furnished by the said Peoria Gas and Electric Company, complainant, all excess over 75 cents per thousand cubic feet, charged and collected by said complainant from such consumers, and all damages that may accrue to said city and said consumers of gas, by reason of the restraining order heretofore entered and continued in said cause, and by reason of the appeal herein if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

[CORPORATE SEAL.] PEORIA GAS AND ELECTRIC COMPANY,
By F. W. LITTLE, *Vice Pres't.*

Attest:
THEO. J. MILLER, *Secretary.*

THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
By JACOB WACHENHEIMER,
Agents and Attorneys in Fact.
[CORPORATE SEAL.]

Approved Apr. 6, 1904.
KOHLSAAT, *J.*

O. K. 4/25/04
O. K.
WALTER H. KIRK,
City Attorney of City of Peoria, Illinois.
J. O. H.
WINSLOW EVANS,
Of Counsel of City of Peoria.

Endorsed: "Filed Apr. 26, 1904. Marshall E. Sampsell, clerk.

284 And afterwards on the same day to-wit the twenty-sixt day of April A. D. 1904, the same being one of the regula days of the April term of said court, among others further proceed ings were had in the same cause and entered of record in the word and figures following to-wit:

285 In the Circuit Court of the United States, Northern Distric of Illinois, Southern Division.

TUESDAY, *April* 26, *A. D.* 1904.

Present: Hon. Christian C. Kohlsaat, district judge.

PEORIA GAS AND ELECTRIC COMPANY *vs.* CITY OF PEORIA. } 288. In Chancery. Fo Injunction, etc.

Now comes the complainant, by its solicitors, and files its petitio for appeal to the Supreme Court of the United States together wit its assignments of error and its appeal bond in the penalty of on hundred and fifty thousand dollars ($150,000.00) with the Unite States Fidelity and Guaranty Company as surety; and the com plainant having now complied with the rules of said court, and th order entered herein on March 24th, 1904,

It is thereupon ordered that said appeal be and the same is hereb allowed to the Supreme Court of the United States, and that a transcript of the record herein be transmitted to the clerk of said court within 30 days.

Ent'd Apr. 26, 1904.

KOHLSAAT, *J.*

O K 4/25/04
O K
WALTER H. KIRK,
City Attorney of City of Peoria, Illinois.
J. O. H.

286 NORTHERN DISTRICT OF ILLINOIS, *Southern Division,* } *ss:*

I, Marshall E. Sampsell, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify that the fore going eight volumes numbered from one to eight inclusive are a full, true and complete transcript of the record, proceedings and evidence in the cause wherein Peoria Gas and Electric Company is complain ant and City of Peoria is defendant, as fully as the same appears of record and remains on file in my office, except "Exhibit 11" omitted by agreement.

Seal of Circuit Court U. S., Northern Dist. Illinois, Southern Division, 1887.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Peoria in said southern division of said northern district of Illinois, this fourteenth day of May, A. D. 1904.

MARSHALL E. SAMPSELL, *Clerk*,
By F. C. HOWE, *Ch. Dep.*

287 UNITED STATES OF AMERICA, *ss*:

To City of Peoria, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a an order allowing appeal, filed in the clerk's office of the circuit court of the United States for the southern division of the northern district of Illinois, wherein Peoria Gas and Electric Company is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said decree mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Christian C. Kohlsaat, district judge this 26th day of April, in the year of our Lord one thousand nine hundred four.

KOHLSAAT, *Judge*.

287½ [Endorsed:] #3494. #241. No. 288. Supreme Court of the United States. Peoria Gas and Electric Company *vs.* City of Peoria. Citation to the Supreme Court of the United States.

April 27, 1904.—Service accepted.

CITY OF PEORIA,
By WALTER H. KIRK,
City Att'y.
WINSLOW EVANS,
Of Counsel for City of Peoria.

I have served the within writ within my district in the following manner, to-wit:

Upon the City of Peoria, therein named by personally delivering a true copy of the same to Edward N. Woodruff, mayor of the city of Peoria, Illinois, at Peoria, Illinois, this 27th day of April A. D. 1904.

And by reading the same to and in the presence and hearing of Walter H. Kirk, city attorney, for the city of Peoria, Illinois, who at the same time acknowledged service on the said writ by endorsing

The bill avers that the city council had no power to pass the ordinance, that the rate as fixed by the ordinance is unreasonably low, that its enforcement would deprive the complainant of its property without due process of law, and would deny to complainant the equal protection of the laws, thus raising a Federal question on the fourteenth amendment to the Constitution of the United States. The answer of the city avers that the complainant has entered into an illegal combination or understanding with the old gas company; second, that whether that be so or not, the complainant is estopped to deny the validity of this ordinance or the reasonableness of this rate by certain acts of its own at the time this franchise ordinance was passed; third that the city council had power to pass the ordinance in question; and fourth that the rate fixed was a reasonable one.

257 I am of the opinion that the averment of the answer which I have first mentioned, has been so fully proven by this record that it must be conclusive of the case. The Illinois anti-trust law, as construed by the supreme court of Illinois, leaves no doubt in my mind that this record shows, on the part of this complainant, a violation of that act in the manipulation of the stock of both companies, the use of the mains of both companies, the performing by complainant's servants of the business of both companies, the simultaneous agreement of rates between the officers of both companies, and the contract in evidence between the two companies,—all lead to the inevitable conclusion that there was an understanding between complainant and the old company such as the Illinois act prohibits. A court of equity will not assist complainant to reap the fruits of such unlawful combination. The exceptions on the part of the city to that part of the master's report which omits to find in accordance with this view, will be sustained, and I need not enlarge upon the other numerous questions raised by this record. The bill will be dismissed at complainant's costs. Counsel for the city may prepare the order.

STATE OF ILLINOIS, }
County of Peoria, } ss:

N. L. Fastenau, being first duly sworn, on oath says that on the 8th day of February, A. D. 1904, she attended upon the session of the circuit court of the United States for the northern district of Illinois, southern division, before the Honorable J. Otis Humphrey, judge of said court, and then and there took down in short-hand the opinion rendered by said judge in the case of Peoria

258 Gas and Electric Company *vs.* City of Peoria; and affiant further says that the foregoing is a true and correct copy of the said opinion, duly transcribed by this affiant from the original stenographic notes in the possession of this affiant,

N. L. FASTENAU.

Subscribed and sworn to before me this 23rd day of March A. D. 1904.

[NOTARIAL SEAL.]

ROBERT P. JACK,
Notary Public.

Endorsed "Filed Mar. 23, 1904. Marshall E. Sampsell, clerk, as of Feb. 9, 1904."

And afterwards, to-wit, on the twenty-third day of March,
259 A. D. 1904, the same being one of the regular days of the regular October term A. D. 1903 of said court, among others, further proceedings were had in said cause and entered of record in the words and figures following to-wit:—

260 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

WEDNESDAY, *March* 23, *A. D.* 1904.

Hon. J. Otis Humphrey, district judge.

PEORIA GAS AND ELECTRIC COMPANY
vs.
CITY OF PEORIA. } 288.

This cause coming on to be heard, on the petition of the defendant for a rehearing herein, filed by order of the court as of February 9th 1904, and the court having heard the same and the arguments of the council and being now fully advised in the premises denies said petition, and thereupon the defendant excepts thereto.

261 And afterwards, to-wit on the twenty-fourth day of March A. D. 1904, the same being one of the regular days of the regular October A. D. 1903 term of said court, among others, further proceedings were had in said cause and entered of record in the words and figures following, to-wit:—

262 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

THURSDAY, *March* 24, *A. D.* 1904.

Present: Hon. J. Otis Humphrey, district judge.

THE PEORIA GAS AND ELECTRIC COMPANY
vs.
CITY OF PEORIA. } 288. In Chancery. For Injunction.

This cause having come again for a hearing on motion of the defendant, it is ordered by the court that the defendant The City of

Peoria, have leave to withdraw its suggestion of damages and the same *are* by the said city of Peoria withdrawn without prejudice to the right of the said defendant or any proper person in interest prosecuting suit upon the bond of the complainant heretofore given herein on the suing out of the injunction heretofore issued in this cause; and it is ordered by the court that the defendant, The City of Peoria, pay the costs for the taking of proof and making report by the master herein on the said suggestion of damages.

And this cause further coming on to be heard on the bill of complaint, the answer of the defendant and the replication thereto and the report of the master therein and the exceptions thereto and the evidence reported by said special master, and the court having heard the arguments of counsel and being now fully advised in the premises, finds from the evidence heretofore taken and reported in said cause, that the complainant unlawfully entered into a combination, agreement, or understanding with the Peoria Gas, Light and Coke Company, (another corporation organized and doing business under the laws of the State of Illinois and engaged in the business of furnishing gas to the citizens of the defendant, The City of
263 Peoria, in competition with the said complainant), to regulate or fix the price at which gas should be furnished the people and citizens of the defendant, The City of Peoria by the complainant and the said Peoria Gas, Light and Coke Company, contrary to and in violation of the statutes of the States of Illinois, approved June 11th, 1891 and in force July 1st, 1891; and that the complainant is, therefore, without equity and that the injunction heretofore issued in this cause should be dissolved.

It is therefore ordered, adjudged and decreed by the court that the injunction heretofore issued in this cause be and the same is hereby dissolved and that the complainant's bill of complaint be and the same is hereby dismissed for want of equity and that complainant pay the costs of this suit, to be taxed, not herein otherwise directed, and that the defendant have execution therefor.

And the court further finds from the evidence taken and reported by the master F. C. Howe and orders that the sum of six hundred and six dollars ($606.00) paid by defendant for printing abstract of the evidence in the record in this cause in accordance with rule 38 of this court, be taxed as costs to be paid by the complainant; and that the sum of five hundred dollars ($500.00) for making report; and the sum of four hundred fifty dollars ($450.00) the *per diem* and necessary expenses paid to I. C. Pinckney, special master-in-chancery of this court by defendant for taking the evidence in said cause for defendant, be taxed as costs herein to be paid by the complainant; and that the sum of five hundred twenty-six dollars and seventy-two cents ($526.72) paid by the defendant, City of Peoria, to Charles P. Watson, for his fees and *per diem* and necessary expenses in taking the evidence of the defendant in short hand and writing out the same for the said special master-in-chancery, I. C. Pinckney, be taxed as costs, to be paid by the complainant.

264 And thereupon the complainant enters its motion herein for an appeal to the Supreme Court of the United States, which is allowed, and the court fixes the amount of the bond at the sum of one hundred and fifty thousand dollars ($150,000.00), conditioned that if the said complainant shall not prosecute its appeal with effect and make its plea good, then the said complainant shall well and truly pay and refund to the said city of Peoria for the use of such of the inhabitants thereof as are consumers of gas furnished by the said Peoria Gas and Electric Company complainant all excess over seventy-five cents per thousand cubic feet charged and collected by said complainant from such consumers and all damages that may accrue to said city and said consumers of gas by reason of the restraining order heretofore entered and continued in said cause and by reason of the appeal herein.

And it is further ordered by the court said bond when so filed and approved shall operate as a supersedeas and shall keep in force the restraining order heretofore entered during the pendency of this appeal or until the further order of the court.

And it is further ordered by the court that pending said period of sixty days from this date the former restraining order entered herein shall remain in force.

Enter

HUMPHREY, *J.*

265 And afterwards on to-wit the twenty-fourth day of March, A. D. 1904, there was filed in the office of the clerk of said court in said cause, the opinion of the court by Judge J. Otis Humphrey, which said opinion is in the words and figures following, to-wit;—

266 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS AND ELECTRIC COMPANY
vs.
CITY OF PEORIA.

Opinion by Judge J. Otis Humphrey, February 8, 1904.

Oral.

This matter comes up on exceptions to the master's report. I believe both complainant and defendant have filed exceptions to certain affirmative holdings of the master, and both parties have also filed exceptions because the master failed to hold—omitted to hold—upon certain other questions. Without undertaking to specify the facts about this long list of exceptions, this record shows that complainant's bill was filed on September 18, 1900, seeking to enjoin

the enforcement of an ordinance of the city of Peoria fixing the maximum rate for gas, which ordinance had been passed on the 4th day of the same month,—September, 1900.

The bill avers that the city council had no power to pass the ordinance, that the rate as fixed by the ordinance is unreasonably low, that its enforcement would deprive the complainant of its property without due process of law, and would deny to complainant the equal protection of the laws, thus raising a Federal question on the fourteenth amendment to the Constitution of the United States. The answer of the city avers that the complainant has entered into an illegal combination or understanding with the old gas company; second, that whether that be so or not, the complainant is estopped to deny the validity of this ordinance or the reasonableness
267 of this rate by certain acts of its own at the time its franchise ordinance was passed; third, that the city council had power to pass the ordinance in question; and fourth, that the rate fixed was a reasonable one. I am of the opinion that the averment of the answer which I have first mentioned, has been so fully proven by this record that it must be conclusive of the case. The Illinois anti-trust law, as construed by the supreme court of Illinois, leaves no doubt in my mind that this record shows, on the part of this complainant, a violation of that act. The manipulation of the stock, the use of the mains of both companies, the performing by complainant's servants of the business of both companies, the simultaneous agreement of rates between the officers of both companies, and the contract in evidence between the two companies.—all lead to the inevitable conclusion that there was an understanding between complainant and the old company such as the Illinois act prohibits. A court of equity will not assist complainant to reap the fruits of such unlawful combination. The exception on the part of the city to that part of the master's report which omits to find in accordance with this view, will be sustained, and I need not enlarge upon the other numerous questions raised by this record. The bill will be dismissed at complainant's costs. Counsel for the city may prepare the order.

STATE OF ILLINOIS, } ss:
County of Peoria, }

N. L. Fastenau, being first duly sworn, on oath says that on the 8th day of February, A. D. 1904, she attended upon the session of the circuit court of the United States for the northern district of Illinois, southern division, before the Honorable J. Otis Humphrey, judge of said court, and then — there took down in short-
268 hand the opinion rendered by said judge in the case of Peoria Gas and Electric Company *vs.* City of Peoria; and affiant further says that the foregoing is a true and correct copy of the said opinion, duly transcribed by this affiant from the original stenographic notes in the possession of this affiant.

N. L. FASTENAU.

Subscribed and sworn to before me this 23rd day of March A. D. 1904.

[NOTARIAL SEAL.] ROBERT P. JACK,
Notary Public.

Endorsed: "Filed March 24 1904. Marshall E. Sampsell, clerk."

269 And afterwards on to-wit the twenty-sixth day of April, A. D. 1904, there was filed in the office of the clerk of said court in said cause, a petition for appeal, which said petition is in the words and figures following, to-wit:—

270 In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS AND ELECTRIC COMPANY *vs.* CITY OF PEORIA. } In Chancery. For Injunction, etc.

The above named complainant, Peoria Gas and Electric Company, conceiving itself aggrieved by the order and decree made and entered in the above named court, in the above entitled cause, under date of March 24th, 1904, wherein and whereby among other things it was and is ordered and directed that the bill of complaint of said complainant be dismissed for want of equity, does hereby appeal to the Supreme Court of the United States from said order and decree for the reasons set forth in the assignment of errors which is filed herewith; and it prays that this its petition for its said appeal may be allowed and that a transcript of the record proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated April 25th, 1904.

EDWARD C. RITSHER,
WILLIAM T. ABBOTT,
WILLIAM T. IRWIN,
Solicitors for Peoria Gas and Electric Company, Complainant.

4/25/04 O. K.
WALTER H. KIRK,
City Attorney of City of Peoria, Illinois.
WINSLOW EVANS,
Of Counsel for City of Peoria.
O. K.
J. O. H.

Endorsed: "Filed Apr. 26, 1904, Marshall E. Sampsell, clerk."

contain nine retorts and each bench contains also a regenerativ
furnace of the full depth type for heating retorts; the gas after bein
driven off of the coal passes over into a preliminary air condenser
from this condenser it passes through a tar extractor of
9 type commonly known as P. & A.; it then passes through tw
other air coolers and then through two water coolers, the
through a washer and then through two scrubbers; the operatio
up to this point is for the purpose of reducing the temperature dow
to about the atmospheric temperature and the removal of the ta
and ammonia; after leaving the scrubbers, the gas passes throug
purifyers containing oxide of iron for the purpose of removing th
impurities known as sulphuretic hydrogen and carbonic acid; afte
leaving the purifyers the manufacture of gas is complete and it the
passes through a station meter where it is registered as to volum
and thence into a storage holder from which it is distributed
through the proper mains into the street.

Q. Have you with you a plan of the buildings, machinery an
apparatus of the Peoria Gas & Electric plant in the city of Peoria

A. I have (witness produces plan). Here it is.

Q. Is this plat produced by you a correct representation of th
plan of the Peoria Gas & Electric Company's gas plant in the city
of Peoria?

A. It is correct as the property stood in June, 1900, when thi
drawing was made; and there has been no change of any impor
tance made since that time and it is substantially correct to-day.

Q. Is it the same plan of the buildings, machinery and apparatu
that existed at the time the bill was filed in this case in September
1900?

A. Yes sir.

Q. Is it drawn to a scale?

A. Yes sir.

Q. Are the marks, lines and figures as shown upon that pla
correct?

10 A. Yes, sir, I checked them all and I think every figur
mark is correct, as the plan stood in September, 1900 on th
date of the filing of this bill.

Complainant's counsel offers in evidence and exhibits to the maste
the plat just identified by the witness, which said plat is hereto at
tached and marked by the master Exhibit 1.

(Mr. MANSFIELD:)

Q. Did you make this plat yourself?

A. It was made under my direction; I did not make it myself.

(Mr. IRWIN:)

Q. Explain the lines, figures and notations as shown upon Ex
hibit 1.

A. For convenience I will speak of the side of the property nex

the river where are located the tracks of the Peoria Terminal railway, as south, the opposite side, where are located the tracks of the Peoria & Pekin Union railway, as north; Rye street, as shown on the plat is on the west side of the main body of the property, owned and used by the Peoria Gas & Electric Company; the coal shed, it will be observed, is in the north-west corner of the property and is reached at the easterly end by a side-track of the P. & P. U. Ry. Co.; another side-track of the P. & P. U. Ry. Co. runs through the coal-shed down to the coke shed which is located in the south-west corner of the property; the plant is used in the following manner, viz: coal is received into the coal shed from the tracks usually of the P. & P. U. Ry. from whence it is taken over a scale into the retort house, where it passes on an elevator and is carried up to the second floor of the retort house, where it is fed into the retorts and carbonized; after being carbonized, the coke is drawn and
11 falls in shutes down to the basement floor of the retort house, where it is quenched and thrown into buggies, carried up onto the second floor on an elevator and then brought out on a platform and delivered into the car, or brought over and put into the coke-shed; the gas after being driven off of the coal passes through the main pipe, located on the plan in the westerly end of the retort house, over into the preliminary condenser, as shown, thence through the various pieces of apparatus, described in my previous testimony, through the purifying apparatus, meter, and into the storage holder.

Q. On the easterly end of the plat, what do these buildings represent?

A. The office meter-room for the storage and repair of consumers' meters; store room for the storage of gas stoves, fittings, etc., and fitting shop and a pipe shed. Further describing the process of manufacture, I want to say we have one piece of apparatus not previously mentioned, known as a fixing bench; there are times when the coal produces gas of a lower candle power than we wish to send out to our customers, and we have a bench containing a closed retort in which we gasify nap-tha for the purpose of enriching the gas and bringing a portion of the purified gas back through the purifyers through the fixing bench to be mixed with the naphtha gas and send it all again through the condensing and purifying apparatus, in this way raising the candle power of the gas.

Q. What gas plants have you examined throughout the country with reference to their completeness, utility and economical
12 manufacture of gas?

Objected to by defendant unless the gas works the witness has examined are similar to the works of the Peoria Gas & Electric Company in the city of Peoria.

Mr. IRWIN: They are not similar, I will state that. I propose to show the knowledge the witness has of plants generally and from that knowledge he has evolved and installed the best and most

economical plant that is in use in Peoria to show his experience and knowledge of gas plants.

The MASTER: I think it admissible for that purpose.

A. I have examined a very large number of gas plants, among others the plant of the Cleveland Gas Light & Coke Company, the Cincinnati Gas Light & Coke Company, the Dayton Gas Light Company, the Hamilton Gas Light Company, the Canton Gas Light Company, the Youngstown Gas Light Company, the Toledo Gas Light & Coke Company, the Tiffin Gas Light Company—all in Ohio. The Lansing, Kalamazoo, Saginaw and Detroit Gas Companies in Michigan. The Wilkesbarre, Eagle Falls and Pittsburgh Gas Companies in Pennsylvania. The Chicago, Evanston, Bloomington, Springfield, Jacksonville, Streator, Dixon, Belvidere Gas Companies in Illinois. The Sioux City, Dubuque, Burlington, Waterloo, Le Mars and Oskaloosa Gas Companies in Iowa; the Fon- du Lac, Racine, Os-kosh and Milwaukee Gas Companies in Wisconsin. The Minneapolis Gas Company in Minneapolis; the New York City, Staten Island and Westchester Gas Companies in New York State, the plants at Springfield and St. Louis, Missouri.

Q. Who laid out the plans for the construction of the plant of the Peoria Gas & Electric Company in the city of Peoria.

13 A. They were laid out by myself and Mr. C. H. Christie, who was then the superintendent of the works.

Q. Were they submitted to any other experienced gas manufacturers for approval?

A. Yes sir, they were criticized and gone over in the usual way by Mr. Geo. O. Knapp, president of the Peoples Gas Light & Coke Company of Chicago and by John Williamson, the consulting engineer of that company.

Q. Was the plan as made or outlined by you for the Peoria Gas & Electric Company's plant approved by Mr. Knapp and Mr. Williamson?

Objected to as incompetent and immaterial.

A. Yes sir.

Q. State whether or not the plan of the Peoria Gas & Electric Company's plant offered in evidence as Exhibit 1 is the plan referred to as prepared by you and approved by Mr. Knapp and Mr. Williamson?

Objected to same grounds as before.

A. The plan as offered in evidence is substantially the plan which was agreed upon; if any changes were made after the plans were submitted to Mr. Knapp, they were minor and unimportant changes.

Q. In outlining and making the plans of the Peoria Gas & Electric Company in the city of Peoria, what did you take into consideration in making the same?

A. The size of the town, its possible future growth and development, the cost of gas making materials, the price at which residuals could be sold and the general conditions of the gas business then existing; that is to say, there was another gas company already in operation there and it would be necessary for us to be prepared to make gas of a good quality at a low cost and it was necessary
14 to have the best possible plant in order to compete with it.

Q. Who had charge of the construction of the plant of the Peoria Gas & Electric Company in the city of Peoria?

A. I did.

Q. What was the population of the city of Peoria at the time of the erection of the plant of the complainant company?

A. The population of the city proper was about 56,000; the total population within the district which we proposed to reach was between 55,000 and 60,000, probably approaching the latter figure.

Q. What is the capacity of the plant of the complainant company in Peoria?

A. The plant of the Peoria Gas & Electric Company has a bench capacity of from 600,000 to 650,000 cubic feet per day of 24 hours; the condensing plant is designed for a working capacity of 25,000 cubic feet per hour, which is equal to slightly over 500,000 cubic feet per day; there are two purifying boxes, each of the capacity of 800,000 to a million cubic feet per day; the steerage holder has a capacity of 300,000 cubic feet; the total plant has an easy working capacity of 520,000 and can be crowded up to 600,000 and 650 cubic feet per day of 24 hours.

Q. How much mains in distance, or length, did the Peoria Gas & Electric Company have in the city of Peoria and vicinity on the first of December, 1900 at the time of the commencement of this suit?

A. Substantially 26½ miles.

15 Q. About what extensions have been made since that time?

Objected to as immaterial.

A. Very few extensions of any importance.

Q. How many service pipe- and services did the company have at the time of the commencement of this suit in the first part of September, 1900.

A. About 2,000.

Q. Were those services installed and in use by consumers by that time?

A. Nearly all of them; occasionally one has been put in where people were not using gas, but substantially all were in use at that time.

Q. State the character of the plant of the Peoria Gas & Electric Company at the time of the institution of this suit as to its being a modern and economical plant for the manufacture and distribution of gas?

Objected to as leading, suggestive and calling for a conclusion.

A. The plant, at the date mentioned, represented in my opinion the very latest and best practice in the design and construction of gas plants for the most economical and profitable production of gas and was superior in this respect to any gas plant of a similar size with which I am acquainted.

Q. Do you know the cost of material, machinery, apparatus, and labor entering into the construction of the plant of the Peoria, Gas & Electric Company in the city of Peoria?

A. Yes sir.

Q. What was the cost of it at the time of the commencement of this suit about September 1st, 1900.

A. The cost on September 1st, 1900 was $434,252.35.

16 Q. Did that include the cost of the real estate?

A. Yes sir.

Q. Who had the purchasing of the material and apparatus, making of the contracts, the superintendency and outlay of the money required in the construction of complainant's plant.

A. I had.

Q. Were there correct books of account kept during all the time of the construction of the plant of the complainant showing the cost of all labor, material, machinery and apparatus entering into the construction thereof?

A. Yes sir.

Q. Do such books of account show the actual cost of all matters entering into the construction of the plant?

A. Yes sir.

Q. Do such books also show the cost of the real estate upon which the plant is located?

A. Yes sir.

Q. Are all of the expenditures entering into the construction of the plant evidenced by vouchers made at the time of the outlay of the several amounts of money entering into the cost of the plant?

A. Yes sir.

Q. Under whose supervision was all the money paid out that entered into the cost and completion of the plant?

A. Under my supervision.

Q. What was the cost of all the labor, material, machinery and apparatus entering into the construction of the plant of the complainant as compared with the market value of such at the time of the construction of the plant?

A. Every purchase was made at the lowest market value

17 obtainable cash being paid for everything.

Q. How did the price of such labor, material, machinery and apparatus entering into the construction of that plant, compare with the price of like labor, material, machinery and apparatus at the time of the commencement of this suit?

A. There had been a general rise between the date of the purchase

of the material and apparatus in the plant and the date of the commencement of this suit.

(The MASTER:)

Q. Do you mean by that answer to be understood as saying there was a general rise in labor, material, and all matters entering into the plant?

A. Practically everything.

(Mr. IRWIN:)

Q. What was the cost of the plant then including the real estate upon which the same is situate?

A. The total cost of the plant, including real estate, labor and materials of all sorts and kinds [and the general expenses incident to the organization of the business] as of September 1st, 1900 was $434,252.35.

Defendant objects to that part of the foregoing answer inclosed in brackets and moves the court to exclude it unless something is shown as to what the expenses incidental to the business mean.

The MASTER: I think the answer may stand; that is a matter you can enquire into on cross examination.

(Mr. IRWIN:)

Q. Have you a compilation or statement of the cost of the plant of the complainant showing the different items of expenditure entering into the cost of the same?

A. Yes sir.

Q. In what form have you such compilation or statement?

18 A. The form follows the general scheme of accounts as used in the business; it classifies all expenditures under thirty-eight different headings and subdivides each heading into labor and material.

Q. Name the different headin-s under which the books have been kept from which the statement referred to is compiled.

Objected to by defendants as not the best evidence.

The MASTER: The question only calls for him to detail the separate headings under which the different items were charged—a classification of the several items of expense.

A. Account No. 1 salaries of officers; account No. 2 accounting department; account No. 3, general office sundries; No. 4 canvassing; No. 5 insurance; No. 6 rentals; No. 7 interest; No. 8 taxes; No. 9 legal expenses, loss and damage; No. 10 stationery, printing and postage; No. 11 stable expenses; These 11 accounts are assembled under the general heading "General expenses." Account No. 13 generator, fuel; No. 14 gas, coal; No. 15, boiler, fuel; No. 16, bench fuel; No. 17, manufacturing labor; No. 18, manufacturing supplies; No. 19 oil; No. 20, enrichers; No. 21, purification, labor; No. 22,

purification supplies; Accounts from No. 13 to No. 22 inclusive, are assembled under the general head "Manufacturing expenses." Account No. 23 distribution, labor; No. 24, distribution supplies. Accounts No. 23 and No. 24 are assembled under the general heading "Distribution expenses." Account No. 26 miscellaneous supplies and expenses; account No. 32 land and buildings; Accounts from No. 27 to No. 31 inclusive are repair and renewal accounts
19 which don't have to do with the cost of the property. Account No. 33 extension of mains; account No. 34 manufacturing plant; account No. 35 new meters; No. 36, new services; No. 37 tools and implements; No. 38 furniture and fixtures. Accounts No. 33 to Nos. 38 inclusive are assembled under the general head of "Additions to property."

Q. From your superintendency and management of the construction of the plant and your examination of the accounts and vouchers, are you able to state whether or not the books of account are correct as showing the cost of the plant.

A. Yes sir.

Q. Are they correct?

A. Yes sir.

Q. Was the compilation and statement made by you as to the cost of the plant of the Peoria Gas & Electric Company of the city of Peoria made from the books and vouchers for the payment of money referred to?

A. Yes sir.

Q. It is correct?

A. Yes sir.

Mr. Irwin: For convenience and reference, complainant now offers in evidence the statement identified by the witness as to the cost of the plant up to September 1st, 1900, which said statement is hereto attached marked by the master Exhibit 2.

Objected to by the defendant for the reason that the complainant has not shown that the statement was taken from the books of original entry; also because complainant has not shown that the books were kept and entries made at the time by the witness, or by a disinterested party and for the further reason that the books of account are the best evidence.

20 Mr. Irwin: I don't offer that particularly as evidence, but more for convenience; I should think the counsel for defense would want it. But if he insisis that we bring our books and vouchers here, we have a wagon load of them and he can have our books and vouchers and go through them; but we don't want to spend a month here finding out the cost of this building, going through item after item.

The Master: The statement will be admitted subject to the objection.

Q. How was the statement or compilation referred to made?

A. It was made by the book-keeper of complainant and myself

working jointly together; we examined the vouchers, the books of account, proved them up, examined the cash book, and took the total amount of cash received by the company and the total expenditures and the balance on hand at that date and checked it against the expenditures as shown by the statement.

Q. Do you know whether or not that statement is correct?

A. Yes sir, it is correct.

Q. What is the character of the gas business as to the stability of the price of manufacture and the permanency of the plant?

Objected to as immaterial.

A. The business is a growing and changing one and the process is improved and changed from time to time. Since the first introduction of the business, there has been great changes in the character of the apparatus and the detailed methods of manufacture and distribution.

Q. What changes have been made in the process of manu-
21 facturing gas say in the last twenty years.

A. The coal gas process has been almost entirely changed in the last twenty years by the introduction of regenerating furnaces for the heating of retorts, and the slower and more careful method of conversion and by the substitution of oxide for lime in the purification of gas; these changes have been extremely radical and in a majority of instances have necessitated the remodeiling or rebuilding of gas plants, making coal gas.

Q. What effect, if any, does such changes in the process of manufacturing gas have upon the machinery and apparatus, or life of a plant when it don't involve reconstruction?

Objected to as immaterial unless complainant shows some changes have occurred in its plant since its installation at Peoria up to the filing of this suit.

Mr. IRWIN: The purpose of this line of questions is to show the risk of the business.

A. The principle effect of the change mentioned is, in shortening the life of the retorts and benches; this is due to the higher heats carried in regenerative furnaces as compared with open fire furnaces, resulting in a more rapid disintegration of the retorts and brick work around the furnaces.

Q. Are there any other agencies now operative upon the pipes, machinery or apparatus of a gas plant in a city of the size and character of Peoria?

Objected to as immaterial.

A. The destructive influences about a gas plant and main system are the presence about the plant of gas more or less charged with sulphur and acids which destroy the metal work, including
22 the roof supports, trusses and covers of purifying boxes, the shells of the condensing plant and the drum at the station

thereon the acceptance of service of same, also by reading the same to and in the presence and hearing of Winslow Evans, of counsel for the city of Peoria, Illinois, who also acknowledged service on the said writ and endorsed his acceptance thereon this 27th day of April A. D. 1904.

JOHN C. AMES,
U. S. Marshal,
By S. O. TRIPP, *Deputy.*

Fees.

3 servises	6.00
2 miles.....	.12
	$6.12

288 UNITED STATES OF AMERICA:

Supreme Court, October Term, A. D. 1904.

PEORIA GAS AND ELECTRIC COMPANY *vs.* CITY OF PEORIA.	Appeal from United States Circuit Court for the Northern District of Illinois, Southern Division.

It is hereby stipulated between counsel for the parties in the above entitled cause that inasmuch as it appears that a copy of Complainant's Exhibit "11" cannot be produced in time for the preparation of the record within the time limited by law, and for that reason the clerk of said circuit court of the United States for the northern district of Illinois, southern division, has omitted the same, as appears in his certificate attached to the record in said cause, that said Exhibit "11" may be supplied to the clerk of the Supreme Court at any time prior to the printing of the record; and in case counsel for complainant are not able to procure a copy of said Exhibit "11" that the record may be printed and considered by the court without said exhibit.

EDWARD C. RITSHER,
W. T. IRWIN,
WILLIAM T. ABBOTT,
Complainant's Solicitors.
WALTER H. KIRK,
City Attorney for the City of Peoria.
WINSLOW EVANS,
Of Counsel for City of Peoria.

a Vol. 1. Schedule "B." Israel C. Pinkney, special master.

Filed Jun- 3, 1903. Marshall E. Sampsell, clerk.

1 UNITED STATES OF AMERICA, } ss:
State of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY }
vs. } In Chancery.
CITY OF PEORIA. }

Index to oral testimony and documentary evidence given at the hearing of the above entitled cause at Chicago, Illinois, November 5, 6, 7, 8, 9, 13, 14, 15, 16, 1901.

Index to Witnesses.

Name.	Direct.	Cross.	Re-d.	Re-cross.
Little, Francis W.....	8	186	239	245
Cowdery, Edward G.....	253	271		

Documentary Evidence.

Plat of complainant's property—Exhibit "1"	p. 10
Statements marked Exhibits "2 to 7" inclusive, being statements of cost of gas plant and property, operating expenses May 1 to August 31, 1901; results of operation same period: results of operation Sept. 1, 1900, to August 31, 1901; operating statement year ending August 31, 1901; gas statistics in all cities of 50,000 population and upwards—originals attached at end of this volume—said exhibits offered on pages..	20, 23, 47
Extracts from supplement to public statutes, Mass.....	62, 63, 64
15th. Annual Report, Gas & Electric Light Commissioners of Massachusetts—Extracts therefrom.	65 and 66
Stipulation as to sub-vouchers.....	74
Stipulation as to both original and sub-vouchers, original attached at end of volume Exhibit "9".....	139
Pamphlet, containing classification of accts. of complainant company attached at end of volume Exhibit "8" Extracts from same read in evidence.....	142
Assessment schedule, dated April 26, 1901.....	196
Information called for by defendant's counsel of F. W. Little.....	223 to 235

2 UNITED STATES OF AMERICA, } ss:
State of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY
vs.
CITY OF PEORIA. } In Chancery.

Testimony taken in the above entitled cause before Judge I. C. Pinkney, special commissioner, in the directors' room of the Equitable Trust Company, Chicago National Bank building, No. 150 Monroe street, Chicago, Illinois, on the several dates set forth in the following pages.

Directors' room, Chicago National Bank building.

CHICAGO, ILL., *November* 5, 1901—10 o'clock a. m.

Parties met by agreement.

Present: Judge I. C. Pinkney, special commissioner.

Messrs. W. T. Irwin and E. C. Ritsher appearing for complainant Mr. Henry Mansfield appearing for defendant.

It is hereby stipulated by and between the solicitors for the respective parties hereto, that the testimony in this case may be taken in shorthand by Chas. P. Watson, a stenographer, and transcribed by him or under his direction, and that the signatures of the witnesses to their respective depositions are hereby expressly waived.

3 FRANCIS W. LITTLE, called on behalf of complainant, being first duly sworn, according to law, deposes and says:

Direct interrogatories by Mr. IRWIN:

Q. State your name, age and residence?

A. Francis W. Little; Peoria, Illinois; 42.

Q. What business are you engaged in?

A. I am the vice-president and general manager of the Peoria Gas & Electric Company of Peoria, Illinois.

Q. What business is the Peoria Gas & Electric Company engaged in?

A. In the manufacture and distribution and sale of gas and electricity in Peoria and vicinity.

Q. How long have you held such position, or a similar position connected with the manufacture and sale of gas?

A. I have held the position mentioned with the Peoria Gas & Electric Company since about the first of May, 1900; for about five years prior to that time, I was the vice-president and manager of the Akron Gas Company of Akron, Ohio.

Q. How long have you been connected with public service corporations and municipal service?

A. I have been officially connected with such corporations since 1890.

Q. What has been your former experience with public service corporations prior to taking charge of the Akron & Peoria Gas Companies?

A. Since 1884, or 1885 I have been either interested in such properties or officially connected with them.

4 Q. Will you state in detail what your experience has been in public service corporations up to the time of taking charge of the Peoria Gas & Electric Company?

Objected to by defendant unless it is confined to gas companies; the mere fact that he was connected with public service corporations would not be material.

The MASTER: I don't think the master has any power to pass on the competency or materiality of any question or answer thereto; the parties may make their objections to the testimony and it will be admitted subject to the objection; the objections, however, must be made at the time or they cannot be considered by the court.

Mr. IRWIN: The question is merely preliminary for the purpose of showing the knowledge and experience of the witness.

A. Beginning about the year 1882, I was in the money loaning business and dealing in bonds and securities; at that time I began to investigate the merits of gas and electric light securities and bought such securities, investigated the accounts of gas companies and familiarized myself with that particular line of business. In 1886, I was interested in the formation of a trust company which succeeded to my own business and business of other people in northwestern Iowa; the trust company dealt in similar securities and in my position as secretary of the company one of my duties was to investigate all loans of this character which were offered to the company. In 1890, I became president of the Lincoln Street Railway Company, Lincoln, Nebraska, but remained for some time thereafter a director of the trust company and continued to supervise the making of such loans, while continuing to actively manage

5 the affairs of the railway company; I continued in this line of business until 1895, when I went to Akron, Ohio to take charge of the Akron Gas Company.

Q. And following your management of the Akron Gas Company, you came to Peoria?

A. Yes sir.

Q. Are you familiar with the business of manufacturing and selling gas?

A. Yes sir.

Q. Have you made the business of the manufacture and sale of gas a specialty for any period of time, if so, state how long?

A. I have been in the direct management of gas companies since

1895, having the entire charge of the manufacture and sale of the gas made by the companies with which I was connected.

Q. What investigation have you made, if any, of the different processes of the manufacture of illuminating and fuel gas for genera purposes?

A. I have made that branch of the business a special study for the last six or seven years.

Q. Will you give a brief history of the art of manufacturing illuminating and fuel gas?

Objected to by defendant unless it is confined to the process of manufacture as carried on in the city of Peoria.

A. Gas, as first introduced, about 100 years ago, was made from the destructive distillation of coal and usually in cast iron retorts and with common furnaces to heat the retorts; this process was carried along for many years, subject to only the ordinary and usual improvements until about twenty years ago; at that time, a process, commonly known as the water gas process, was brought for-
6 ward and extensively introduced; these two processes, that is to say, coal gas and water gas, are the processes now commonly in use both in this country and abroad; the water gas process, which is in use generally in this country, is technically known as a carbonated water gas; the use of the cast iron retorts and open fire furnaces in making coal gas has almost entirely disappeared; nowadays coal gas is almost universally made in fire-clay retorts, which are heated by regenerative furnaces.

Q. What is the difference in the manufacture of what is known as coal gas and what is known as water gas—describe it?

A. The coal gas process consists of the destructive distillation of bituminous coal in closed retorts from which all air is excluded and these retorts are heated by external fires; the heat drives off the gas, which is contained in the coal, and leaves a residuum of carbon, known as coke; in the continuation and purification of coal gas thus made, there are two other by-products which result and are tar and ammonia; they are in addition to the coke. In the water gas process,—(interrupted)

Q. While you are on that, what are those products you have mentioned that grow out of the manufacture of coal gas, ordinarily from?

A. The three by-products resulting from the manufacture of coal gas are termed and sold under the names of coke, tar and ammonia.

Q. They are commonly called residual products?

A. Yes sir.

Q. I think my former question also included the manufacture of water gas?

A. Yes sir. What is known as water gas or carbonated
7 water gas, is made in a plant of a totally different kind and character. The first piece of apparatus in a water gas plant

is known as a generator; this consists of a cylindrical shell lined with fire brick, containing a grate near the bottom; the generator is filled with coke or anthracite coal, the fire is then lighted and the entire fuel bed is brought to a state of incandescent heat by means of an air-blast; the air blast is then shut off and steam is introduced into the fuel bed, the result being, the decomposition of the steam, the oxygen uniting with the carbon of the fuel and forming carbonic oxide; the other element, hydrogen, is formed into hydrogen gas; these two gases pass from the generator into a second shell which contains fire brick in a checker form, which has been previously heated to a state of incandescent heat, by the waste products of the combustion of the fuel generator; this second shell is called the carbo-metor; with the admission of the carbonic oxide and hydrogen gases, a spray of oiley vapor is forced into the carbo-metor, all three gases there uniting and being intimately mixed by the passage through the heated checker work; passing out of the carbo-metor, the gas which then has been intimately mixed, as stated, goes on into a third shell similarly filled with heated fire brick where the gas is super-heated and converted into a fixed gas; the water gas process is distinguished primarily from the coal gas process by the fact that in the water gas process the residuals are of very little value; the only residual being a small amount of a substance commonly known as tar, but which has very few of the characteristics of coal tar. The office of the carbo-metor is to break up and gasify the molecules composing the oil which is sprayed into this piece of apparatus. The oil being a complex compound, will not all gasify and a por-
8 tion of it passes over and this is known as water gas tar and as stated, is the only residual product in the manufacture of water gas?

Q. Which kind of gas is considered the most economical for general use in this country?

A. That is entirely a matter of local conditions, depending upon the cost of materials, the cost of real estate and plant and the market for residual products.

Q. Which kind would be the most economical to manufacture for general use in a city of the size, character and location of the city of Peoria?

A. Coal gas can be made very much cheaper in Peoria than water gas.

Q. In speaking of the cost of real estate in the manufacture of the two different kinds of gases,—what do you mean by that statement?

A. A water gas plant of equal capacity requires very much less ground than a coal gas plant for the reason that the generating apparatus takes up less room than coal gas apparatus and no ground is required for the storage of the residuum.

Q. Please give the machinery and the several processes required in the manufacture and purification of coal gas in the plant of the Peoria Gas & Electric Light Company in the city of Peoria.

A. The Peoria plant consists of a stack of seven benches, which

ing the value of all residuals during that period and including 6½% depreciation and 10% upon the investment.

A. Yes sir.

Q. Please state what that cost was?

A. $2.56 3/10 per thousand cubic feet.

Q. Can you state the cost as related in the last preceding question, counting interest upon the investment at 5% per annum instead of 10%?

A. Yes sir.

Q. State what that cost was?

A. $2.12 1/10 per thousand cubic feet.

Q. Have you with you a statement or compilation showing the actual cost of the manufacture of gas and delivery of the same to the consumers of the Peoria Gas & Electric Company giving the figures concerning which you have just testified about during the period from May 1st, 1900 to August 31st, 1900, and from Sept. 1, 1900 to August 31st, 1901?

A. Yes sir, I have it in the form of two statements, one showing the amount of gas sold in cubic feet—the total expenses, the
32 total amount of residuals made, the net actual expenditure and a classification of the expenditures showing where the money was spent. The first statement is entitled "an operating statement" and the other statement shows the total amount of gas sold, the total expenditures, the value of the residuals made and a computation on the cost of the plant at the rate of 6½% per annum, the amount of interest at 5% per annum on the cost of the plant and the amount of interest on the cost of the plant at 10% per annum, then a statement showing the total cost and the cost per thousand cubic feet under all of the different theories and conditions mentioned in the interrogatories pertaining to the cost of gas.

Q. Are those statements you refer to correct?

A. Yes sir.

Q. Are those statements a compilation taken from the books of the company?

A. Yes sir.

Q. Were those books correct?

A. Yes sir.

Q. Do the books show the actual cost of the manufacture of gas?

A. They show all of the expenditures and the amount of gas sold and the value of the residuals made.

Q. Who made those statements that you refer to?

A. They were made by myself jointly with the book-keeper of the company.

Q. And you know them to be a correct compilation from the books?

A. Yes sir, I compared all the figures with the original books and checked them myself.

Q. And as to the adding of the price, including the interest and

depreciation, those figures were figured out by you yourself
33 from the actual cost as shown by the books?

Complainant's counsel offers in evidence the statements identified by the witness, which said statements are hereto attached, marked by the master Exhibits 3, 4, 5, and 6.

Objected to as not the best evidence.

Q. I understood you to say that the total expenditures of the manufacture and delivery of gas fro n May 1st, 1900, to September 1st, 1900 was $21,041., did that include the value of residuals, or after deducting the value of the residuals?

A. That was the money expended after deducting the value of the residuals?

Q. What would be the amount expended without deducting the value of residuals during that period?

A. The total expenditures during that period without deducting the value of the residuals was $26,413.46.

Q. I understood you to testify that the total expenditures for the manufacture and delivery of gas from September 1st, 1900 to August 31, 1901 was $60,257.25; is that the cost before or after deducting the value of all residuals during that period?

A. That sum represents the expenditures before deducting the value of the residuals.

Q. What was the value of the residuals during that period?

A. $20,372.91.

Q. Can you state the candle power of the gas as manufactured by the Peoria Gas & Electric Company at the time of the commencement of this suit in September, 1900?

A. Yes, sir.

34 Q. What was the candle power at that time?

A. Between 17 and 18.

Q. That was the candle power of the gas as manufactured by your company and delivered to consumers at that time?

A. Yes sir.

Q. What has been the candle power of the gas as manufactured and sold by your company to consumers from May 1900 up to the present time?

A. It ranges between 16½ and 19 candle power,—the average has been about 18.

(The MASTER:)

Q. Is there any method known to the art by which the candle power can be kept uniform?

A. Not absolutely uniform; it will vary according to weather conditions and pressure; there is also an atmospheric pressure.

(Mr. IRWIN:)

Q. Will you please explain fully how the candle power of gas is determined?

A. The candle power of gas is determined by nearly all gas companies by an instrument known as a bar photometer; this is an instrument which is set up in a dark room from which all daylight is excluded and consists of a wooden bar, at one end of which is placed two standard English sperm candles; these candles are manufactured as a rule in England and are sent out under the seal of the British board of trade; at the opposite end of the bar a gas flame is placed and the gas is regulated to one inch pressure and at the rate of consumption of exactly 5 cubic feet per hour; travelling along on the top of the bar is a screen in which is placed a disc of
35 white paper containing a paraffine spot usually in the shape of a star; when a light is thrown on both sides of the screen of equal intensity, the spot becomes invisible to the eye and the indicator on the screen points to a scale on the bar which shows the candle power of the gas.

Q. What is ordinary candle power of gas as manufactured by the several gas companies throughout this country that manufacture coal gas?

Objected to as immaterial.

A. It varies between 14 and 18 candles according to the quality of material used and the amount of enrichers used to bring up the candle power.

Q. Which is the higher candle power, coal or water gas.

A. Generally water gas is manufactured and delivered at a higher candle power than coal gas.

Q. What is the comparison between coal and water gas as to illuminating power?

A. Coal gas has a larger flame for a given amount of consumption per burner and also has a denser flame and therefore gives a greater degree of illumination for a given number of cubic feet than coal gas; as a general proposition, 18 candle power coal gas is equal in its illuminating value to 24 candle power water gas.

Q. Please explain wherein candle power differs from illuminating power?

A. The distinction is based upon a law of physics which is that the color of the light, which is determined by the molecular vibration, determines the power of the light to diffuse itself through the atmosphere. In other words, the light in which the molecu-
36 lar vibration is low, is better diffused and permeates the atmosphere better than where the molecular vibration is higher.

Q. Can you tell why it is that coal gas at 18 candle power has as high illuminating qualities as water gas at 24 candle power?

A. Because of the difference in the rate of vibration of the molecules of gas when burning, and because of the power of the gas burning at a lower rate of vibration to diffuse through the atmosphere; it is also in a measure due to the difference in specific gravity of the two gases, coal gas being of lighter specific gravity, the vol

ume is larger and presents a greater radiating surface than the water gas.

Q. Is it practicable to deliver gas to consumers of a quality of the uniform 18 candle power at the place of consumption?

A. No.

Q. Why?

A. First because it is impossible to make gas of an absolute uniform candle power, because the atmospheric pressure, the temperature in the works, in the storage holders and in the mains, all influence the candle power of the gas, and also because of the fact that the friction in the distributing mains, and more particularly in the piping system in the houses of the consumers, will reduce the candle power if the friction becomes excessive. In other words, if it is necessary to increase the pressure under which the gas is delivered in order to send it into the mains and pipes of the consumers' houses, you thereby reduce perceptibly the candle power of the gas;

it is also impracticable to make coal gas higher than 18 or
37 18½ candle power to the satisfaction of the consumer because such a gas is rich in hydrocarbon and smokes easily; anything that creates an air current in the room causes the gas to smoke badly, if the candle power is higher than 18 or 18½ made of coal gas.

Q. What candle power would it require the Peoria Gas & Electric Company to manufacture gas so that at all points of delivery for consumption it would not be less than 18 candle power?

A. It would have to be at least 21 candle power when leaving the works to show 18 candle power under all conditions and at all times at the point of consumption.

Q. Would the manufacture of coal gas of the uniform 21 candle power at the factory be practicable?

A. No, it would not.

Q. Would it be satisfactory to consumers?

A. No, it would not.

Q. Why?

A. Because a coal gas of so high a candle power would contain a very large percentage of rich hydro-carbon, which makes the gas very smoky and the cost of enriching it from the ordinary standard of 17 or 18 candle to 21 candle would be excessive.

(The MASTER:)

Q. Is the consumption by the ordinary consumer more or less if the candle power is increased above the ordinary candle power?

A. They are dissatisfied with it; it is too rich and it is as bad to have too rich gas as too poor.

(Mr. IRWIN:)

Q. How much is the increased cost of manufacture of coal
38 gas and delivery to consumers to manufacture it at a uniform candle power?

A. Probably from 7 to 10 cents per thousand cubic feet; I don't think it could be done in Peoria for less than 10 cents per thousand cubic feet.

(The MASTER:)

Q. Do you mean in addition to the cost of 18 candle power gas?
A. Yes sir, to bring it up the additional three candles.

(Mr. IRWIN:)

Q. Would your figures as to the cost of manufacture and delivery of gas in the city of Peoria necessarily raise the 7 to 10 cents per thousand cubic feet, if you were required to manufacture gas at 21 candle power at your plant?

A. Yes sir, I don't think it would be practical at all to manufacture any such a gas in Peoria unless it remained a combination of coal and water gas; I don't think it would be practicable to make it 21 candle power gas from coal enriched with nap-tha or cannel coal or any of the ordinary methods of enriching; I think it would have to be a mixed gas.

Q. Would that require the installation of a water gas plant in addition to the plant you now have?

A. Yes sir, it would.

Q. Is the manufacture of gas a continuing process?

A. Yes sir, the making of coal gas is a continuing process; that is necessitated by the fact that the retorts are heavy and made of fire clay and are heated by regenerating furnaces and inclosed in a mass of brick work; it is necessary to keep the heat at all times in the furnaces and run the retorts so that they don't cool off below
39 a temperature at which gas can be made; otherwise the retorts would go to pieces very rapidly, disintegrate through contraction and expansion, as would also the brick work in which the furnaces and retorts are placed.

Q. About how long does it require to heat a retort?

A. It takes from 2 to four weeks to start up a new stack of benches, or benches with which the retorts have been recently placed—refilled, as we call it.

Q. About what degree of heat is required.

A. In regenerative furnaces, you probably reach from 4000 to 5000 degrees of temperature.

Q. What kind of furnaces are used by the Peoria Gas & Electric Company?

A. Regenerative furnaces; we required four weeks to heat up our benches the first time and they have never been let down since.

Q. At what price did the Peoria Gas & Electric Company sell gas at the time of the commencement of this suit?

A. At the price of $1.15 net for light and $.75 net for fuel; these were the prices if the bills were paid on or before the 10th day of the following month at which the gas was consumed; if they were

not so paid after the 10th day of the month, the price was $1.25 for light and 85 cents for fuel.

Q. Why did you make two prices, one for illuminating gas and one for coal gas?

A. Because of the fact that our company in making and selling gas for light was required, by reason of the fact that the manufacture of gas is a continuous process, to have its plant in operation during the entire 24 hours of the day; the gas sold for fuel is
40 consumed almost entirely during the daylight hours; its primary use is for gas stoves in houses, for gas engines and in the mechanical arts, where it is used during the ordinary business day or during the daylight period; the manufacture of this additional amount of gas imposes no additional burden on the company excepting the material required in the manufacture. In other words, it don't affect the fixed expenses of the business which were the same whether any considerable amount of gas was sold for fuel or not and we wished to stimulate and develop the use of gas for fuel purposes and daylight consumption.

Q. What proportion of the illuminating gas is used in the daytime and what at night?

A. Certainly not more than 10% of the gas sold for illuminating purposes is used during the daylight period; the other 90% is used during the dark hours of the night.

Q. Would the same proportion apply to fuel gas in the day and night time?

A. No sir, it would be almost exactly reversed; about 90% of the fuel gas is sold in the day time and the remainder sold during the night.

Q. Is gas for the use of fuel comparatively a new departure or venture in the manufacture and sale of gas?

A. Yes sir.

Q. Was that one reason why the price was made as designated?

A. Yes sir, that was one of the reasons as stated in my answer to the previous questions; we wished to develop and stimulate the use of gas for fuel because that was a new use for it. It has been
41 only within the last half dozen years that people generally have been willing to believe that gas could be used for fuel purposes economically.

Q. Did your company sell gas stoves?

A. Yes sir.

Q. How many gas stoves did your company sell about between May 1st, 1900 and September 1st, 1901?

A. About 700.

Q. About how many were sold between May 1st, 1900 and September 1st, 1900?

(Mr. MANSFIELD:)

Q. You have an account of the number of stoves sold on your books, have you not?

A. Yes sir.

(Mr. MANSFIELD:) I then object to the question as not the best evidence.

(The MASTER:) If the witness has a personal knowledge of it independent of his books, I think it competent.

Q. What were the prices at which you sold gas for the several purposes on September 1st, 1900?

A. $1.15 net for light; 75 cents net for fuel; those were the net prices if the payment for the fuel gas was made before the 10th of the following month in which the gas was used. Otherwise they paid 10 cents more on the price of either class.

Q. What was the number of gas stoves sold by your company approximately between the 1st day of May, 1900 and the first day of September, 1900? Do you know how many?

A. Yes sir; we sold between May 1st, 1900 and September
42 1st, 1900 a few more than 400 stoves.

Q. Would it be practicable to operate a gas plant of the character of the Peoria Gas & Electric Company's plant by simply operating it during the night shift for the manufacture of illuminating gas?

A. No, it would not.

Q. Why?

A. Because the process is necessarily a continuous process and the men would have to be there during the entire 24 hours and the plant would have to be kept in operation during the 24 hours, otherwise the heat would fluctuate so you could not carbonize the coal at all.

Q. Are you acquainted with the price at which coal gas is sold throughout other cities in the United States?

A. Yes sir.

Q. In what cities throughout the United States of a population of 50,000 or upwards do you know the price at which coal or water gas was sold at or about the time of the commencement of this suit or prior thereto?

Objected to as immaterial and incompetent unless it is shown the same conditions surrounded the places where the gas was furnished as in the city of Peoria?

A. I am familiar with the price at which gas was sold about the time of the commencement of this suit in all cities in the United States having a population of 50,000 and upwards.

Q. Please state the cities you refer to.

A. Harrisburg, Pa.; Kansas City, Kansas; Elizabeth, N. J.; Erie,
Pa.; Duluth, Minn.; San Antonio, Texas; Salt Lake City,
43 Utah; Savannah, Ga.; Charleston, S. C.; Utica, N. Y.;
Manchester, N. H.; Evansville, Ind.; Troy, N. Y.; Spring-

N. J.; Camden, N. J.; Wellington, Delaware; Reading, Pa.; Hartford, Conn.; Seattle, Washington; Nashville, Tenn.; Richmond, Va.; Dayton, O.; Grand Rapids, Mich.; Atlanta, Ga.; Portland, Oregon; Cambridge, Mass.; Albany, N. Y.; Lowell, Mass.; Memphis, Tenn.; Los Angeles, Cal.; Omaha, Neb.; St. Joseph, Mo.; Fall River, Mass.; Patterson, N. J.; New Haven, Conn.; Syracuse, N. Y.; Worcester, Mass.; Columbus, Ohio; Allegheny, Pa.; Toledo, Ohio; St Paul, Minn.; Kansas City, Mo.; Indianapolis, Indiana; Providence, R. I.; and Minneapolis, Minn.; Louisville, Ky.; Jersey City and Newark, N. J.; Washington, D. C.; Milwaukee, Wis.; Detroit, Mich.; New Orleans, La.; Pittsburg, Pa.; Cincinnati, O.; San Francisco, Cal.; Buffalo, N. Y.; Cleveland, O.; Baltimore, Md.; Boston, Mass.; St. Louis Mo.; Brooklyn, New York; Philadelphia, Pa.; Chicago, Ill.; and New York city.

Q. Have all of the cities you have named a population of 50,000 and upward?

A. Yes sir.

Q. Have you a schedule prepared by yourself showing the population of the several cities named, the amount of the output and manufacture of gas, showing the net and gross price at which gas is sold in said several cities for illuminating and fuel purposes?

Objected to as immaterial.

A. Yes sir.

Q. Is the schedule so made by you correct?

A. Yes sir.

Q. Is it a correct schedule of those prices at or about the
44 time of the commencement of this suit?

A. Yes sir, the schedule states the prices prevailing in the cities mentioned at and about September 1st, 1900.

Q. Is that schedule correct?

A. Yes sir.

Q. Will you produce it and have it attached as a part of your answer to this interrogatory for convenience and reference in this case?

A. Yes sir.

(By Mr. MANSFIELD:)

Q. Where did you get the figures contained in this statement?

A. I got them from a number of different sources, partly from letters written to me by people and partly from personal examination and visits to the plants and partly from a trade publication known generally as Brown's Directory of the American Gas Companies.

(The SAME:)

Q. Were any of these figures compiled from your personal knowledge of the output of the gas plant and the cost of the distribution of the gas in any of these cities?

meter. The mains are subject to disintegration from the action of acids formed in the soil, which are impregnated more or less with ammonia and other salts due to the presence of horses and animals in public streets and also to acids which form in streets where the ground is what is known as made ground, filled with cinders etc. and to a greater or less extent to the action of electrolysis.

Q. From what source does electrolytic action prevail now in the city of Peoria?

Objected to as immaterial.

A. From any grounded circuit carrying an electric current.

Q. What electric plants or currents are there in Peoria that operate more or less on your gas piping system?

Objected to as immaterial and because the witness has not qualified himself to testify on that subject.

A. The street railways in Peoria operate with the overhead trolley using the rails for the return circuit, and there are some small motors in the city also using a ground return.

Q. Any telephone systems?

A. The telephone system has some grounded circuits, I think, in Peoria.

Q. What effect, if any, has competition of other kinds of lights had upon the stability and permanency of the gas business if you know?

Objected to as immaterial.

A. The electric light cuts into the gas business, especially in gas sold for illumination, as does also gasoline and other forms of
23 regenerating light using a Wellsbach mantle, made of rare oxides; kerosene lamps are now made which first convert kerosene into gas, then burns it to illuminate mantels; this is also a somewhat serious competition.

Q. What effect, if any, has the competition or inroads of the use of oils and electricity for illuminating purposes had upon the gas business in Peoria.

Objected to as immaterial.

A. They reduce the quantity of gas used for lighting purposes.

Q. Taking into consideration the destructive agencies that result to a gas plant, as mentioned in your testimony above, what in your judgment would be the probable and ordinary depreciation, annual depreciation of a gas plant of the character and location of the one constructed by you in the city of Peoria.

Objected to as immaterial because the question is based on a conclusion that there are destructive agencies at work.

A. About 6½ per cent. would be the annual depreciation.

A. What in your opinion is the annual depreciation of complainant's plant in the city of Peoria?

Objected to as immaterial.

A. About 6½ per cent. of the cost of the property.

Q. From your experience and observation in the management and investigation of gas plants, are you able to state what would be a reasonable and fair return to investors taking into consideration the hazard of the investment, on account of the improvements and competition concerning which you have testified.

24 Objected to as immaterial.

A. Yes sir.

Q. What would be a fair and reasonable return to investors upon the cost of the plant of complainant, taking into consideration the hazards of the business and the improvements arising from time to time?

Objected to as immaterial.

A. In my opinion, ten per cent. per annum on the cost of the property would be a fair return to any investor.

(The MASTER:)

Q. You mean by that 10% on the original cost, or 10% on the original cost and betterments to it?

A. 10% of the construction value of the property, whatever it may be at any time.

(Mr. IRWIN:)

Q. What effect has natural gas had upon the hazards of the investment in the manufacture of gas from the investor's standpoint?

Objected to as immaterial.

A. Where natural gas is found, or likely to be found, it increases the hazard or risk of the business very materially.

Q. Do you know of any localities where it has materially affected the business of the manufacture and sale of gas for investment, if so, state them?

Objected to as immaterial.

A. Yes sir, all through Ohio, Pennsylvania and Indiana, where natural gas has been found, it has very materially decreased the profits of the business and value of the business, in some instances, almost destroying the value of the business of the gas companies.

Q. Do you know of any other hazards you have not
25 already testified about that face the business of manufacturing and selling gas in municipalities?

Objected to as immaterial.

A. Yes sir, a condition threatens now which may necessitate a very great increase in the expenditures of gas companies by reason of a radical change in the process of manufacturing; there are two new processes being developed at the present time, one known as the by-product oven process, which has come into very general use in Germany, and a number of plants of that character have been constructed in England and a number in this country.

Q. What effect would that process have upon a plant of the character of complainant's plant in Peoria.

Objected to as immaterial.

A. It would almost necessitate the complete abandonment of the present plant, require the building of a new one.

Q. What determines whether such process would have to be adopted or not.

Objected to as immaterial.

A. Its general use by other people in the same vicinity would necessitate its adoption by the existing company as a matter of precaution to prevent its getting into the hands of other people and letting them come in and compete with you and make gas cheaper than you could.

Q. Do you know whether there is any prospects of natural gas being found in or about Peoria where the plant of complainant is now located?

Objected to as immaterial.

26 A. Indications of natural gas have been found there recently, and the report is in current circulation of an attempt to develop it and determine the absence or presence of gas at the present time.

Q. Is it not a fact that the organization of a company for that purpose has already been consummated?

Objected to as immaterial.

A. Yes sir.

Q. Have they not been for some time raising money and selling stock for the purpose of continuing the development of the gas field, if one can be found in that locality.

Objected to as immaterial.

A. Yes sir, a company has been formed for the development of natural gas properties, which are claimed to exist immediately across the river from Peoria and stock is now being sold and efforts made to develop the natural gas which is supposed to exist there and of which indications have been found.

Q. If natural gas were found to any extent in that locality what if any effect in your judgment would it have upon the plant and business of the complainant.

Objected to as immaterial and incompetent.

A. If any considerable amount of natural gas was found there, and it were piped into Peoria, it would take away practically all of the fuel gas business of the complainant.

Q. What distance would it require the piping of gas from the supposed gas fields near Peoria to bring it into the city.

Objected to as immaterial and incompetent.

27 A. About three miles.

Q. Is that an unreasonable distance to pipe natural gas to supply the city?

Objected to on the same grounds.

A. No sir, a very short distance.

Q. From your management and control of the Peoria Gas & Electric Company, are you able to tell the actual cost of the manufacture of gas by that company?

A. Yes sir.

Q. When did the Peoria Gas & Electric Company begin the manufacture and sale of gas in Peoria?

A. A small amount of gas was made in the latter part of the month of March, 1900 and the plant was gotten into shape to operate fully during the month of April, the first gas being sent out, I think, on the 27th of March, if my memory serves me right, and gas was continuously sent out from that time on, but the work of putting the plant into shape, getting it limbered up and put in running order took the entire month of April, 1900.

Q. Then you were in good operation about May 1st, 1900?

A. Yes sir.

Q. Are you able to give the cost of gas per thousand feet delivered to consumers from the plant of the Peoria Gas & Electric Company in the city of Peoria during the period beginning May 1st, 1900 and ending August 31, 1900?

A. Yes sir.

Q. Can you give such cost during that period exclusive of depreciation and exclusive of interest on the investment, taking into your calculation, however, any moneys received from the sale of residuals during that period.

A. Yes sir.

28 Q. What is that cost?

A. The total cash expenditures from May 1st, 1900 to August 31, 1900 after deducting the value of the residuals made, was $21,041.43. During that period, we sold 15,475,200 cubic feet; the cost per thousand cubic foot of the gas so sold was $1.35 8/10 cents; that is exclusive of depreciation and interest on the investment and after deducting from the cash expenditures the value of the residuals.

Q. Can you give the cost of gas per thousand cubic feet as manu-

factured by the plant of the Peoria Gas & Electric Company, without deducting the moneys received or the value of residuals during that period, exclusive of interest on the investment and depreciation.

A. Yes sir.

Q. Will you please state what that cost is?

A. For the period mentioned, the cost was $1.70 6/10 per thousand cubic feet.

Q. Can you give the cost of gas per thousand cubic feet during the period from May 1st, 1900 to August 31st, 1900 without deducting the amount of value of the residuals and including interest on the investment at the rate of 10 % per annum?

A. Yes sir.

Q. Please state what that cost was?

A. $2.64 2/10 per thousand cubic feet.

Q. Can you give the cost per thousand cubic feet during the period from May 1st, 1900 to August 31st, 1900 without deducting the value of residuals and including 10 % upon the investment and 6½ % depreciation on the cost of the plant?

A. Yes sir.

Q. Please state what that cost was?

A. $3.24 1/10.

29 Q. Can you give the cost per thousand cubic feet of gas manufactured by the complainant company from May 1st, 1900 to August 31st, 1900 after deducting the value of all residuals and including 10 % interest upon the investment and 6½ % depreciation on the cost of the plant?

A. Yes sir.

Q. Will you please state what that cost is?

A. $288 6/10.

Q. Can you give the cost of gas manufactured by the complainant company during the period from May 1st, 1900 to August 31, 1900 after deducting the value of all residuals during that period and including interest on the investment at 5 % per annum and also including 6½ % depreciation on the cost of the plant?

A. Yes sir.

Q. Will you please state what that cost is?

—. $2.41 9/10.

Q. Are you able to give the cost of gas per thousand cubic feet as manufactured by the Peoria Gas & Electric Company and delivered to consumers during the period from September 1st, 1900 to September 1st, 1901.

A. Yes sir.

Q. Can you give such cost during that period exclusive of depreciation and exclusive of interest on the investment, taking into your calculation, however, any moneys received from the sale of residuals during that period, or the value of any residuals during that period?

A. Yes sir.

Q. Please state what that cost was?

A. The cost during the period mentioned, after deducting the value of the residuals, and excluding any depreciation or interest, amounted to seventy-seven and nine-tenths cents per thousand cubic feet.

30 Q. What was the total cost of the manufacture of gas sold by your company during the period from September 1st, 1900 to September 1901?

A. The total expenditures in the manufacture and delivery of gas from September 1st, 1900 to August 31st, 1901, was $60,257.25.

Q. Does that include residuals or have you deducted the residuals from that amount?

A. The residuals have not been deducted from that amount; that sum represents the total expenditures during that period.

Q. What was the volume of gas manufactured and sold by your company during the period from September 1st, 1900 to August 31st, 1901?

A. The total amount of gas sold to consumers was 51,178,300 cubic feet during the period mentioned.

Q. Can you give the cost of gas as manufactured by the Peoria Gas & Electric Company and delivered to its consumers during the period from September 1st, 1900 to August 31st, 1901 after deducting the cost of residuals and including depreciation upon the cost of the plant at the rate of 6½ %?

A. Yes sir.

Q. Please state what that cost was?

A. $1.31 7/10 per thousand cubic feet.

Q. Can you state the cost of gas as manufactured by the Peoria Gas & Electric Company and delivered to consumers during the period from September 1st, 1900 to August 31st, 1901, after deducting the value of all residuals and including depreciation on the cost of the plant at the rate of 6½ % per annum and including 10 % upon the cost of the investment?

A. Yes sir.

Q. Please state what that cost was?

A. $2.16 5/10 per thousand cubic feet.

31 Q. Can you state the cost of gas manufactured by the complainant company during the period from September 1st, 1900 to August 31, 1901 after deducting the value of all residuals and including therein depreciation on the cost of the plant at the rate of 6½ % per annum and including interest on the investment at the rate of 5% per annum?

A. Yes sir.

Q. Please state what that cost was?

A. $1.74 1/10 per thousand cubic feet.

Q. Can you state the cost of gas as manufactured and delivered to the consumer of the Peoria Gas & Electric Company during the period from September 1st, 1900 to August 31, 1901 without deduct-

A. Only as the result of inquiries directly addressed to the managers of those properties.

(The SAME:)

Q. But not from your inspection of the plants or any definite knowledge you have?

A. No, I could not have that of course.

(By Mr. IRWIN:)

Q. Were a large number of these figures secured from personal interviews with managers?

A. A large number of them were, yes sir; I visited a large number of these plants during the fall of 1900 and early part of 1901 and made careful inquiry as to the price at which they were selling gas.

45 Q. And the schedule presented by you is the result of that investigation?

A. As to those places I visited; as to the others, my information was obtained by correspondence directly with the manager of the plant or by reference to the standard publications known as Brown's Directory of American Gas Companies.

(Mr. IRWIN:) The complainant submits that the schedule is proper and offers the same in evidence, which said schedule is hereto attached and marked Exhibit 7.

Objected to as not the best evidence.

The MASTER: It will be admitted subject to the objection.

Q. Look at Exhibit 7 and state in what cities named thereon gas for illuminating purposes is sold at less than $1.00 per thousand cubic feet net.

Objected to as immaterial.

A. Chicago, Illinois; Cleveland, O.; Cincinnati, O.; Milwaukee, Wis.; Toledo, O.; Grand Rapids, Mich.; and Dayton, O.

Q. What company in Chicago sells at less than $1.00 per thousand cubic feet not for illuminating purposes.

Objected to as immaterial.

A. The Ogden Gas Company.

Q. At what price did it sell illuminating gas for in September, 1900?

Objected to as immaterial.

A. 90 cents per thousand cubic feet.

Q. What proportion of the consumption of gas in Chicago is sold by the Ogden Company.

Objected to as immaterial.

46 A. A very small proportion; they operate only in a small district of the city.

Q. What did the other companies in Chicago sell gas at at that time?

Objected to as immaterial.

A. $1.00 per thousand cubic feet.

Q. Did the same price prevail in those Chicago companies for fuel gas?

Objected to as immaterial.

A. Yes sir.

Q. Cleveland, Ohio is one of the cities where you state that gas is sold for less than $1.00 per thousand cubic feet?

A. Yes sir.

Q. What were the conditions there as compared with the city of Peoria, if you know?

A. I presume y-u mean as to the cost of manufacture?

Q. Yes sir.

A. Cleveland is located within 150 miles of the coal fields from which gas coal is obtained. In this connection I want to say that for a satisfactory manufacture of gas it is necessary to purchase coal in a limited region lying in western Pennsylvania; or in western Virginia, or in a small portion of Kentucky; coal outside of those regions is generally speaking unsuitable for the manufacture of gas; the cost of coal in Cleveland at about the time of the commencement of this suit was $1.60 per to- delivered in the yards of the gas company; at the same time, in Peoria, coal cost upwards of $2.50 per ton, the same coal, by reason of the difference in freight rates; the price of residuals in Cleveland at the same time was higher than in Peoria for the reason that the manufacturing
47 industries of Cleveland and a large well-to-do resident population were willing to pay a higher price for coke than we could charge in Peoria and the gas companies were able to sell their tar and ammonia at better figures because the plants using this material were located at or near Cleveland; we sell tar and ammonia in crude form to tar distillers and ammonia manufacturers who work it up into commercial form; these plants are generally speaking located in northern Ohio or southern Michigan.

Q. What was the price in Cleveland at that time?

Objected to as immaterial.

A. 75 cents net per thousand cubic feet for gas used for both purposes.

Q. Do you know of any other city in the United States of 50,000 inhabitants or upwards where gas is sold at that price?

Objected to as immaterial and incompetent.

A. Yes, sir, Cincinnati, Ohio.

Q. Did the same conditions prevail in Cincinnati as in Cleveland as compared with Peoria?

Objected to as immaterial and incompetent.

A. The conditions prevailing in Cincinnati are even more favorable to the gas companies than the conditions prevailing in Cleveland as compared with the condition prevailing in Peoria.

(The MASTER:)

Q. Do you mean the conditions are more favorable to the gas company or to selling gas for that figure?

A. They are more favorable to the manufacture of gas at a low cost.

(Mr. IRWIN:)

Q. In what particular?

48 A. For the reason the freight rate for gas coal to Cincinnati is lower than to Cleveland because the coal is usually brought down the Ohio river in barges at the cheapest freight rates known in this country. Another fact, that is important in this connection at Cincinnati, a very large amount of coal is elevated from the barges, screened and shipped from there to the West and Northwest. The Cincinnati Gas Light & Coke Company uses for the manufacture of gas screenings when obtainable instead of lump coal. These screenings are bought at a very low price—in the summer of 1900 at the price of 90 cents per ton delivered at the gas works.

Q. Do you know of any other city of a population of 50,000 and upwards that sells gas for 75 cents per thousand cubic feet net?

A. I do not.

Q. Can you tell me what the price of gas is net in Toledo, Ohio?

Objected to as immaterial and incompetent.

A. The price for illuminating light gas, net in Toledo, Ohio is 95 cents per thousand cubic feet.

Q. What are the conditions in Toledo, Ohio as compared with those in Peoria, Illinois for the manufacture of gas?

Objected to as immaterial.

A. Coal is cheaper in Toledo and residuals generally command a higher price.

Q. What is the price in Dayton, Ohio?

Objected to as immaterial.

A. 85 cents per thousand cubic feet net.

49 Q. What are the conditions in Dayton, Ohio, for the manufacture of illuminating gas from coal as compared with the conditions at Peoria, Illinois.

Objected to as immaterial.

A. Coal is cheaper and residuals generally command a higher price.

Q. Are there any other cities than those named that sell gas for less than $1.00 per thousand cubic feet of 50,000 inhabitants and upwards.

Objected to as immaterial and incompetent.

A. In Milwaukee, a certain portion of the gas sold for illuminating purposes is sold as low as 80 cents; they have a sliding scale there; the price varying from $1.00 down to 80 cents, according to the amount of consumption.

Q. What is the gross price charged in Milwaukee?

Objected to as immaterial.

A. $1.20 per thousand cubic feet.

Q. Are there any other cities now of 50,000 inhabitants and upwards, except those named, that sell for less than $1.00.

A. I mentioned Grand Rapids, Michigan and Dayton, Ohio; those are the only two other places.

Q. What is the net price charged for gas in the city of New York per thousand cubic feet.

Objected to as immaterial.

A. $1.00 per thousand cubic feet; it is the same for both illuminating and fuel purposes.

Q. What is the net price charged for gas per thousand cubic feet in Philadelphia?

50 Objected to as immaterial.

A. $1.00 per thousand cubic feet; the same for both light and fuel.

Q. What is the net price charged for gas in the city of Boston?

Objected to as immaterial and incompetent.

A. It varies somewhat according to the district supplied; in the larger part of the city, the net price is the same, but in some of the suburban districts the price is $1.10 and in one case it is $1.40 net; there is no district where it is sold for less than $1.00; it is the same for light and fuel.

Q. What is the net price charged for gas in the city of Buffalo, N. Y.?

Objected to as immaterial and incompetent.

A. $1.00 per thousand cubic feet.

Q. What is the gross price in the city of Buffalo?

Objected to as immaterial and incompetent.

A. $1.20.

Q. What is the price for fuel purposes.

Objected, same grounds.

A. $1.00 net and $1.20 gross.

Q. What is the net price for gas per thousand cubic feet at Baltimore, Md.?

Objected to as immaterial and incompetent.

A. $1.10, and the same for fuel purposes.

Q. What is the net price charged per thousand cubic feet for gas at Pittsburg, Pa.?

Objected to, same grounds.

51 A. One company charges $1.00 and another company doing business in a smaller portion of the city charges $1.20; it is the same price for fuel purposes; they sell but a very small proportion of fuel gas.

Q. How is the city of Pittsburg situated as to conditions for the manufacture of gas as compared with the city of Peoria?

Objected to, same grounds as before.

A. It is right in the midst of the coal fields; the coal is mined right at their very door and they can buy their manufacturing material, coal and oil much cheaper than we can at Peoria.

Q. What is the price charged for gas per thousand cubic feet in the city of Washington, D. C.

Objected to, same grounds as before.

A. $1.25 gross; $1.10 net; the same for fuel purposes.

Q. What is the price charged per thousand cubic feet in the city of Newark, N. J.?

Objected to, same grounds.

A. $1.00 net for both light and fuel; $1.10 gross.

Q. What is the price charged for gas in Louisville, Ky.

Objected to, same grounds.

A. For light $1.20 net; $1.25 gross.

Q. How is it for fuel purposes?

Objected to, same grounds.

A. There are two companies operating in Louisville, one known as the Kentucky Heating Company, which distributes natural gas, or a mixture of natural gas and artificial gas; this gas is all of low candle power and is not suitable for lighting purposes, and 52 they are prohibited by their charter from selling it for lighting and they sell only for fuel purposes, at the price of 55 cents gross and 45½ cents net, being a discount of 10% if the bill is paid promptly. This is a mixture of natural and artificial gas, the larger portion of it, natural gas; they only manufacture artificial gas during the period of low pressure in the natural gas mains. The other company, known as the Louisville Gas Light & Coke Company, sells gas for fuel purposes at 80 cents gross, 75 cents net; the gross price of illuminating gas of that company is $1.25.

Q. What is the price charged per thousand cubic feet in the city of Minneapolis, Minn.

Objected to same grounds.

A. The net price is $1.20 for both light and fuel; $1.40 gross.

Q. What is the price for gas in the city of Providence, R. I. per thousand cubic feet.

Objected to, same grounds.

A. $1.10 for both light and fuel.

Q. What is the price per thousand cubic feet for gas in Indianapolis, Indiana.

Objected to, same grounds.

A. For light, $1.00 per thousand cubic feet net.

Q. What is it in Kansas City, Missouri.

Objected to, same grounds.

A. $1.00 is the net price.

Q. How is it in St. Paul, Minn.

Objected to same grounds.

A. The net price is $1.30; the gross price $1.50; the same
53 for fuel.

Q. How is Indianapolis situated compared with Peoria for the manufacture and delivery of gas?

A. They can buy their coal much cheaper than we can in Peoria because of lower freight rate and because of the fact they can use a considerable percentage of Indiana cannel coal, which is mined right near Indianapolis.

Q. What is the price of gas per thousand cubic feet in the city of Allegheny, Pa.

Objected to same ground.

A. $1.20 gross; $1.00 net.

Q. How does that compare with the city of Peoria.

Objected to, same ground.

A. They can buy their material very much cheaper than we can and get a better price for residuals.

Q. What is the price of gas per thousand cubic feet in the city of Columbus, Ohio.

Objected to, same grounds.

A. $1.00 net; $1.10 gross; same price for fuel purposes.

Q. What is the price of gas per thousand cubic feet in the city of Worcester, Mass.

Objected to, same grounds.

A. $1.00 net; $1.20 gross; same for light and fuel.

Q. What is the price per thousand cubic feet in Syracuse, N. Y.

Objected to, same grounds.

A. $1.30 net for light; $1.50 gross; fuel is sold for $1.00 per thousand both gross and net.

54 Q. What is the price per thousand cubic feet in the city of New Haven, Conn.?

Objected to, same grounds.

A. $1.10 gross; $1.00 net; same for light and fuel.

Q. What is the price per thousand cubic feet in the city of Paterson, N. J.?

Objected to, same grounds.

A. $1.15 net; $1.25 gross; same for both light and fuel.

Q. What is the price per thousand cubic feet in the city of Fall River, Mass.?

Objected to, same grounds.

A. $1.15 net; $1.20 gross; for both light and fuel.

Q. What is the price in the city of St. Joseph, Mo.?

Objected to, same grounds.

A. $1.00 net; $1.25; gross for both light and fuel.

Q. What is the price per thousand cubic feet in the city of Omaha, Neb.?

Objected to, same grounds.

A. They have a sliding scale running from $1.35 down to $1.15 according to the amount consumed and the same price prevails for both light and fuel; the gross price is $1.45.

Q. What is the price per thousand cubic feet in Memphis, Tenn.?

Objected to, same grounds.

A. The gross price in Memphis for light is $1.40; for fuel $1.15; they have a sliding scale of discounts running down to $1.20 for light and $1.00 for fuel.

Q. What is the price per thousand cubic feet in Lowell, Mass.?

Objected to, same grounds.

55 A. $1.00 net for both light and fuel; $1.20 gross.

Q. What is the price in the city of Albany, N. Y.?

Objected to, same grounds.

A. $1.50 net for light and $1.25 for fuel.

Q. What is the price in the city of Cambridge, Mass.?

Objected to, same grounds.

A. $1.00 net for light; $1.20 gross; the fuel price is $1.00 net.

Q. What is the price in the city of Richmond, Va.?

Objected to, same grounds.

A. $1.00 for both light and fuel purposes.

Q. How is that city, as compared with Peoria, for the manufacture of gas cheaply?

Objected to, same grounds.

A. They can buy their material very much cheaper than we can because of their proximity to the coal and oil fields.

Q. What is the price in the city of Nashville, Tenn.?

Objected to, same grounds.

A. $1.00 net; $1.10 gross for both light and fuel.

Q. What is the price in the city of Hartford, Conn.?

Objected to, same grounds.

A. $1.00 net; $1.10 gross for both light and fuel.

Q. What is the price in Reading, Pa.?

Objected to, same grounds.

A. $1.35 net and $1.50 gross for both light and fue .

Q. How is that city as compared with Peoria for the manufacture of gas?

Objected to, same grounds.

56 A. They buy their coal, oil and coke cheaper than we can in Peoria.

Q. What is the price in the city of Bridgeport, Conn.?

Objected to, same grounds.

A. There are two companies operating in Bridgeport, or were two companies at the date of the passage of this 75 cent gas ordinance in Peoria, one making principally coal gas which sold at $1.25 net for light and $1.50 gross; their gross price for fuel was $1.25 subject to a discount reaching as high as 10% according to the quantity consumed and for prompt payment; the other company manufactured a fuel gas, pure and simple, that is to say, it is a carbonated water gas made under what is known as the Loomis process, very low in heat units and having practically no candle power; this gas is sold only for heating purposes.

Q. What is the price in the city of Lynn, Mass.?

Objected to, same grounds.

A. $1.20 gross; $1.00 net for both light and fuel.

Q. What is the price in the city of Lawrence, Mass.?

Objected to, same grounds.

A. $1.10 gross; $1.00 net for both light and fuel.

Q. What is the price in the city of New Bedford, Mass.

Objected to, same grounds.

A. $1.40 gross; $1.12 net for both light and fuel.
Q. What is the price in the city of Des Moines, Iowa?

Objected to, same grounds.

A. $1.20 net; $1.30 gross, for both light and fuel.
Q. What is the price in Springfield, Mass.?

Objected to, same grounds.

57 A. $1.05 net; $1.20 gross for both light and fuel.
Q. What is the price in the city of Troy, N. Y.?

Objected to, same grounds.

A. $1.50 gross for light and $1.25 for fuel; they have a sliding scale discount.
Q. What is the price in the city of Manchester, N. H.

Objected to, same grounds.

A. $1.40 gross; $1.25 net.
Q. What is the price in the city of Utica, N. Y.?

Objected to, same grounds.

A. $1.50 for light; for fuel it ranges from $1.50 per thousand down to $1.00 according to the quantity consumed.
Q. What is the price in the city of Duluth, Minn.?

Objected to, same grounds.

A. For light the gross price is $1.35 with a quantity discount bringing it down as low as $1.15; the price for fuel is $1.25 gross with a net price of $1.00.
Q. What is the price in the city of Elizabeth, N. J.?

Objected to, same grounds.

A. $1.50 gross; $1.25 net for both fuel and light.
Q. What is the price in the city of Kansas City, Kansas?

Objected to same grounds.

A. $1.10 gross, $1.00 net for both light and fuel.
Q. What is the price in the city of Harrisburg, Pa.?

Objected to same grounds.

A. $1.60 net; $1.70 gross for light; $1.25 net and $1.35 gross for fuel.

58 Defendant's counsel objects to all of the foregoing evidence of this witness with regard to the price at which gas was sold in the various cities mentioned on the ground of hearsay and not

matter within the witness's knowledge, and moves the court to exclude it.

Adjourned until Wednesday, November 6, 1901 at 10 a. m.

Directors' room, Chicago National Bank building.

CHICAGO, ILLINOIS, WEDNESDAY, *Nov.* 6, 1901—10 a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special master; Messrs. W. T. Irwin and Mr. E. C. Ritsher appearing for complainant; Mr. Henry Mansfield appearing for the defendant.

Direct examination of FRANCIS W. LITTLE resumed by Mr. Irwin:

Q. I see in the statement introduced in evidence last night marked Exhibit 7, which shows the price of gas charged in the several cities named, that you also show the candle power of the gas in the respective cities. What do you know with reference to the character of the gas manufactured by the respective parties where the candle power exceeds 18 candle power as shown in that statement.

Objected to as immaterial and incompetent.

A. In all instances where the candle power exceeds 18 candle the gas made is water gas, or a mixture of coal gas and water gas.

Q. You resided in the city of Peoria about the first of September 1900?

A. Yes sir.

Q. And had charge of the complainant company at that time?

59 A. Yes sir, I was vice-president and general manager of the company at that time.

Q. And had been since its organization?

A. Yes sir, since the first of May, 1900.

Q. Do you remember the time that the ordinance in question fixing the price of gas at 75 cents was before the city council of the city of Peoria?

A. Yes sir.

Q. Did you interest yourself at that time in determining what action the city was likely to take upon that ordinance?

A. Yes sir, I interviewed the mayor and two or three members of the council while the ordinance was being considered.

Q. Did you make any statement to them as to the cost of the manufacture of gas by your company in the city of Peoria?

A. I did to the mayor.

Q. What did you say to him?

Objected to as immaterial.

A. I said to him that gas could not be made by our company at the price fixed by the ordinance, 75 cents per thousand cubic feet

and requested him, either personally or through any representative he might select to investigate the cost by an examination of our books to ascertain the cost of the plant, the amount of the investment and what it was then and had been costing us to make gas and what would be the probable cost in the future. I offered to permit him or any person he might select to examine our books of account and ascertain for himself every material fact connected with the cost of the plant, or the cost of the manufacture of gas in our works in Peoria.

Q. Did you suggest or request the mayor to have a com-
60 mittee of the council make such examination.

Objected to as immaterial and irrelevant.

A. Yes sir.

Q. Was there any request for such examination from the mayor or any of the officials of the city?

Objected to, same grounds.

A. No.

Q. Was there by any other person on behalf of the city prior to the passage of this ordinance?

A. No sir.

Q. Do you know whether the mayor or city council, or any committee of the city council, or any official, or person on behalf of the city council, made any investigation of your company, or of any other gas company doing business in the city of Peoria, as to what gas could be manufactured and sold for prior to the passage of that ordinance.

A. I know of no such investigation.

Q. Could any such investigation have been made of the cost of manufacture and delivery of gas by your company by the city council, or any committee of the city council, or any one on behalf of the city council, without your having known it?

Objected to as immaterial.

A. I don't think so; no one was authorized to make any statement whatever concerning the Peoria Gas & Electric Company excepting myself and I think no other employee of the company living in the city of Peoria had any means of knowing the facts, or actual cost of the manufacture of gas.

Q. What did the mayor of the city say to you at the time you requested him to make the examination above referred to?

61 Objected to as immaterial and incompetent.

A. He said he would think it over.

Q. Did you ever have any other conversation with the mayor, alderman or any committee of the city council, or any one on behalf of the city council, regarding the price at which gas could be manu-

factured and sold in the city of Peoria by your company, prior to the passage of the ordinance in question.

Objected to, same grounds, and because no proper foundation has been laid.

A. I think not.

The MASTER: What is the purpose of this line of examination, Mr. Irwin.

Mr. IRWIN: To show that they arbitrarily passed the ordinance without any evidence to ascertain what a reasonable charge was; that it was done captiously and without investigation or consideration of the rights of the company.

Q. Was your company ready and willing at any and all times during the pendency of that ordinance before the city council to have given to the mayor, city council, or any committee of the city council, or any one on behalf of the city council, all the information that they might desire regarding the cost of manufacture and delivery of gas by your company?

Objected to, same grounds.

A. Yes sir.

Q. Is the plant of the Peoria Gas & Electric Company so constructed as to enable one familiar with the business to manufacture gas as economically as it can be manufactured by any other
62 design or character of a gas plant for the manufacture of artificial coal gas.

Objected to unless the question is confined to the process of manufacture used in the city of Peoria.

A. Yes sir.

Q. In all your investigation of gas plants, the manufacture of gas and the cost of manufacturing gas in cities of 50,000 and upwards throughout the United States, do you know of any city of that size situated under conditions like the city of Peoria where coal gas can be manufactured and sold at a profit at 75 cents per thousand cubic feet.

Objected to as immaterial and incompetent.

A. Not where the price of materials and the selling values of the residuals approximate the Peoria prices.

Q. Do you know of any such city similarly situated where coal gas can be manufactured and delivered to consumers at 75 cents per thousand cubic feet without any loss to the company?

Objected to as immaterial.

A. No, I do not.

Complainant's counsel offers in evidence from the Supplement to the Public Statutes of Massachussetts, from 1882 to 1888 published

and prepared pursuant to the act of 1888, chapter 383 of the Publi
Statutes of Massachusetts,—from that volume I offer chapter 31
page 333 of said volume, being "An act to establish a board of g
commissioners," and will read section 1 of said act, which is
follows:

63 SECTION 1. The governor by and with the consent of t
council shall appoint three citizens of this Commonwealt
who shall constitute a board of gas commissioners, and the governo
shall designate the chairman thereof. Said board shall have
clerk, to be appointed by the governor with the consent of t
council, who shall make full and faithful records of its proceedin
and shall serve such notices and perform such other duties as t
commissioners may require, and shall be sworn before entering up
the discharge of his duties."

Objected to as immaterial and incompetent.

(Mr. RITSHER:) Complainant also offers in evidence from t
Supplement to the Public Statutes of Massachusetts, 1889 to 189
prepared pursuant to an act of the legislature, Statutes of 1895, cha
863. From that volume, I offer chap. 373, page 127 entitled "A
act to change the name of the board of gas commissioners." I rea
section 1 of that act:—

"SECTION 1. The board of gas commissioners shall hereafter
known and designated as the board of gas and electric light co
missioners."

Objected to as immaterial and incompetent.

Mr. RITSHER: From the same volume on page 166, the co
plainant offers in evidence chapter 440 entitled "An act concerni
the printing and distribution of the laws and public document
and simply call attention to the fact that among the other doc
ments listed in that act there appears on page 170 the followin
"Report of gas & electric light commissioners 3000 copies."

Objected to as immaterial and incompetent.

Mr. RITSHER: Complainant also offers in evidence fro

64 the same volume page 1399, chap. 463, entitled "An act re
tive to the annual expenditures and report of the board
gas & electric light commissioners." I read section 2 of said act.

"SECTION 2. 3500 copies of the report of said board shall be print
annually as a public document and shall be ready for distributi
on the first Wednesday of January, or as soon thereafter as may

Objected to as immaterial and incompetent.

Mr. RITSHER: Complainant also offers from the same volu
page 484, chap. 370 entitled "An act to enable cities and towns
manufacture and distribute gas and electricity and will read secti
10 of said act, which appears on page 487 as follows:

"SECTION 10. The price to be charged for gas or electricity
persons and corporations shall be fixed, and shall not be chang
oftener than once in three months. Any change shall take eff
on the first day of the month and the new price adopted shall,
fore the change can take effect, be advertised in some newspaper

the city or town where the plant is, if any is published therein. Such price shall not, except with the written consent of the gas and electric light commissioners, be fixed at less than cost, in which shall be included in addition to all operating expenses, interest on the net investment in plants made by the city or town*m*, less assessments collected under section 6, at the rate paid upon the bonds above provided for, together with the requirement of the sinking fund established to meet such bonds and also depreciation of the plant to be reckoned at not less than 5% per annum of its cost, and losses, but any loss exceeding 3% of the investment in the plant may be charged in different years at not more than such 3% per annum.

65 Such price shall not be greater than shall allow above such costs a profit of 8 % per annum to the city or town upon its net investment. In fixing such cost to establish the price to be charged to persons and corporations, the gas and electricity used by the city or town shall be charged to it at cost. A sufficient deposit to secure the payment for gas or electricity for three months may be required in advance from any taker, and the supply may be shut off from any premises until all arrearages for gas or electricity furnished thereon, to whomsoever furnished, shall be paid. After three months' default in the payment of such arrearages, all appliances for distribution belonging to the city or town on such premises may be removed and after such removal shall not be restored except on payment of all such arrearages and a sufficient sum to cover any expenses, cost of removal and restoration."

Objected to as immaterial and incompetent.

Mr. IRWIN: In connection with the statute just offered in evidence, complainant offers in evidence the 15th Annual Report of the Board of Gas and Electric Light Commissioners of the Commonwealth of Mass., published pursuant to the act offered in evidence of January, 1900, and complainant specially offers for the record in this case, pages 104, 105, 106 and 107 of said report; the heading of which reads as follows: "The following pages show the price charged by the several companies June 30, 1899, the average candle power as shown by the tests made by the State inspector of gas, and the average price per thousand cubic feet received from sales by meter in each of the two years ending June 30, 1899."

Pages 104 to 107 inclusive are in the words and figures following, to-wit:

65*a* 1900.) Public document No. 35. 103.

Price of Gas.

The following companies reduced the price of gas during the year ending June 30, 1899:—

Attleboro,	Gloucester,	Northampton,
Beverly,	Haverhill,	Taunton,
Cambridge,	Lawrence,	Waltham,
Charlestown,	Lexington,	Webster,
Danvers,	Newburyport,	Williamstown.
Pedham,	North Adams,	

65*b* (Jan. Gas and electric light. 104.

The following pages show the price charged by the several companies, June 30, 1899; the average candle power, as shown by the tests made by the State inspector of gas; and the average price per thousand feet, received from sales by meter in each of the two years ending June 30, 1899:—

Company.	Average candle-power.	Gross price.	Remarks.	Average price 1897–'98.	Average price 1898–'99.
Adams	23.6	$2.50	20 per cent. discount, if paid within five days from date of bill.	$2.01	$2.01
Amesbury	21.5	2.00	Special rate to large consumers.	1.52	1.47
Amherst	43.9	6.00	For payment on or before the 10th of the month, if the bill amounts to $5, discount 5 per cent.; to $10, 10 per cent.; to $20, 15 per cent.; to $50, 20 per cent.; to $75 25 per cent. Oil gas, with 5 to 8 per cent. of air.	5.34	5.42
Arlington	19 6	2.00	....	2.00	2.00
Athol	21.5	3.00	Discounts: 50 per cent per M. if bill is paid within 10 days; 10 per cent. additional to small mills, etc.; 20 per cent. to large mills etc.; 50 per cent. for gas for cooking.	2.04	2.19
Attleboro	16.8	1.70	Discount of 20 cents per M if paid on or before the 16th of the month.	1.70	1.52
Bay State (Boston).	.....	1.00	....	.99.4	98.9
Beverly	18.9	1.80	Discount of 20 cents per M on all bills paid on or before the 15th of the month.	1.74	1.64

Company.	Average candle-power.	Gross price.	Remarks.	Average price 1897–'98.	Average price 1898–'99.
Boston	25.4	1.00		.99.5	.99.4
Brockton	17.1	1.75	Discount of 25 cents per M on all bills paid on — before the 15th of the month.	1.53	1.52
Brookline	25.5	1.00	Discount of 30 cents per M to city of Boston.	98.9	99
Cambridge	17.7	1.20	Discount of 20 cents per M if paid within 15 days from date of bill.	1.14	1.08
65c					
Charlestown	19.2	1.26	Discount of 15 cents per M if paid in 15 days.	1.21	1.14
Chelsea	17.8	1.70	Discount of 20 cents per M bills paid within 15 days $1.30 per M to consumers of over 250,000 feet per annum.	1.52	1.52
Chicopee	21.9	2.25	Discount 50 cents per M and if used for fuel 75 cents per M on bills paid on or before the 10th of the month. To consumer using 5,000 feet per month 75 cents per M discount special rates to very large consumers.	1.42	1.37
Citizens (Quincy).	18.4	2.00		1.96	1.95
Clinton	15.5	2.00	Discount 5 per cent. on bills paid within 10 days. Large consumers supplied at $1.80 with 5 per cent. discount.	1.82	1.82
			Page 105.		
Cottage City		2.20	Discount 20 cents per M if paid in 5 days. For fuel through separate meter, $1.20 per M net. During November, December, January, February, March, and April $1 net per M. Water gas (non-illuminating),	1.42	1.48
Danvers	16.9	2.50	Discounts: On monthly bills from $1 to $15, 12½ per cent. over $15, 20 per cent.	2.30	2.26
Dedham	18.4	2.00	Discount 10 per cent. for payment before the 15th of the month.	2.02	1.76
Dorchester	25.5	1.00		1.00	1.00
East Boston	18.1	1.60	Discount of 10 cents per M on bills paid on or before the 15th of the month.	1.50	1.50
Easthampton	19.5	2.50	Discount to large consumers 50 cents per M; to others 20 cents.	2.08	2.01

Company.	Average candle-power.	Gross price.	Remarks.	Average price 1897–'98.	Average price 1898–'99.
Fall River....	22.2	1.40	Discounts: Consumers of 5,000 feet or less per month, 10 cents per M over 5,000 feet and not over 10,000 feet, 20 cents per M; over 10,000 feet, 25 cents per M; and to mills 40 cents per M.	1.18	1.18
Fitchburg.....	18.0	2.00	Discount of 10 per cent. for payment on or before the 20th of the month. Large consumers $1.50 to $1.40. For gas stoves, 20 per cent. discount.	1.73	1.72
Framingham..	19.7	2.00	Discounts if payment is made before the 15th of the month, 10 per cent.; if used for fuel 25 per cent.; if used in gas engines 37½ per cent.	96	1.53
Gardner . ..	49.1	6.00	Discounts vary according to amount used from 10 to 33⅓ per cent. if paid by the 10th of the month. Pure oil gas.	4.51	4.57
Gloucester....	18.8	1.50	Discount 20 per cent. if paid on or before the 15th of the month.	1.41	1.22
Greenfield .	19.2	2.50	On bills of $2.50 per month for dwelling 5 per cent. discount if paid in five days; on bills of $2.50 for stores, 10 per cent.; $1.50 net if used for fuel.	2.20	2.17
Haverhill.....	24.3	1.10	Discount 10 cents per M if paid on or before the 10th.	1.23	1.19
Holyoke.....	18.8	1.50	Discounts: 20 cents per M to consumers of 360,000 feet per year; 10 per cent. to all others if paid within 5 days after presentation of bill.	1.34	1.34
Ipswich	27.6	2.50	....	2.41	2.07
Jamaica Plain.	17.3	1.45	20 *cents per* discount on all bills paid within 15 days.	1.38	1.26
Lawrence.....	20.0	1.30	Discounts if paid on — before the 15th of the month; on monthly bills of 500 feet or less, 5 cents per M; over 500 feet, 10 cents per M over 1,000,000 feet per year, 15 cents per M; $1.00 net per M for large gas engines.	1.28	1.17
Leominster...	28.0	3.50	Discount 50 cents per M on monthly bills of 3,000 feet and over. Oil gas with 40 per cent. air.	3.38	3.37

65*d*

Company.	Average candle-power.	Gross price.	Remarks.	Average price 1897–'98.	Average price 1898–'99.
Lexington....	26.5	2.78	Discount of 10 per cent. for payment by the 10th of the month.	4.84	2.45
65*e*					
Lowell.....	21.4	1.20	Discount 20 cents per M if paid within 5 days.	1.00	1.00
Lynn.....	19.6	1.20	Discount 20 cents per M for payment within 10 days.	1.00	1.00
Malden.....	18.4	1.70	Discount 30 cents per M if paid by the 15th of the month.	1.42	1.42
Marblehead...	17.6	3.00	Discounts: 16⅔ per cent. on monthly bills of a $1.00 to $3.00, 20 per cent. on bills from $3, to $18 and 33⅓ per cent. on bills $18 and over.	2.38	2.51
Marlborough..	17.7	2.50	Discounts: 10 per cent. on monthly bills for not less than 1,000 feet, and 20 per cent. when not less than 2,000 feet; 40 per cent. for fuel purposes.	1.85	1.77
			Page 106.		
Milford.....	17.9	2.00	Bills amounting to $5 a month 5 per cent. discount; $10 a month 10 per cent.; $50 a month, 15 per cent.; $100 a month, 25 per cent.	1.83	1.82
Nantucket....	17.3	2.50	Net rate to most consumers $2.00, to some $1.50.	2.05	2.04
Natick.....	18.3	2.00	Discounts: 10 cents per M if paid on or before the 15th of the month; 20 cents per M to consumers of 4,000 feet.	1.76	1.78
New Bedford..	20.2	1.50	4,000 feet or less per month 10 per cent.; over 4,000 per month, 25 per cent. discount for payment by the 10th of the month, over 100,000 feet and for gas engines $1 per M net.	1.27	1.27
Newburyport..	19.0	1.70	Discounts: 10 cents per M if paid within 10 days.	1.81	1.66
Newton.....	18.3	1.50	10 per cent. discount if paid before the 20th of the month.	1.37	1.36
65*f*					
North Adams.	19.1	1.75	Gross rates upon a sliding scale of $1.75, $1.40 and $1.30 according to consumption with a discount of 10 per cent. from these prices on all bills paid on or before the 10th of the month; to some consumers for mill consumption special rates	1.13	1.13

Company.	Average candle-power.	Gross price.	Remarks.	Average price 1897–'98.	Average price 1898–'99.
Northampton	18.8	2.00	25 per cent. discount if paid within 8 days, special rates to large consumers.	1.60	1.50
North Attleborough.	17.1	2.00	Discount of 30 cents per M on bills paid before the 16th of the month.	1.70	1.70
Norwood.....	18.9	2.25	If paid within 15 days discount of 25 cents per M.	2.05	2.00
Otis Company (Ware).	19.7	2.00	Public institutions $1.75.....	2.00	2.00
People's (Stoneham).	22.5	2.50	Discount for prompt payment of 10 per cent. if for lighting, 20 per cent. if for mechanical purposes.	2.32	2.31
Pittsfield.....	26.6	2.00	Discounts: 10 per cent. on bills of less than 1,000 feet per month, 15 per cent. on bills of a 1,000 feet and less than 25,000; 25 per cent. on bills of 25,000 feet or over. 25 per cent. on bills of a 1,000 feet or over if for fuel.	1.67	1.64
Plymouth....	17.8	2.50	Special price to large consumers.	1.91	1.92
Roxbury	24.9	1.00	....	1.00	1.00
Salem.....	18.1	1.50	Discount 20 cents per M if paid on or before the 15th of the month.	1.33	1.31
South Boston.	25.4	1.00	....	1.00	1.00
65g					
Southbridge..	23.9	2.50	Discounts: 5 per cent. to consumers of 2,000 feet and not less than 1,000 feet per month 10 per cent. to consumers of over 2,000 feet.	2.42	2.33
Spencer.....	23.9	2.00	If used in gas stoves $1.50...	1.60	1.77
Springfield...	20.0	1.40	15 cents per M discount on all bills paid on or before the 15th of the month.	1.26	1.26
Stoughton....	59.9	5.50	Discount 10 per cent. if paid by the 10th of the month; pure oil gas.	4.92	4.91
Taunton.....	18.0	1.30	Over 125,000 feet per quarter, $1.20 per M.	1.32	1.28
			Page 107.		
Waltham.....	17.0	1.80	Discount 30 cents per M if paid by the 15th of the month.	1.50	1.50
Webster.....	19.0	2.00	For gas stoves $1.50; discount of 5 per cent. to all consumers from above prices, if paid before the 10th of the month, special discount to large consumers.	2.17	2.10

Company.	Average candle-power.	Gross price.	Remarks.	Average price 1897–'98.	Average price 1898–'99.
Williamstown.	52.2	5.25	Discount 25 cents, if paid on or before the 10th of the month; some large consumers $4.50 per M net. Pure oil gas.	5.26	5.15
Woburn.....	18.9	1.80	Discount 30 cents, if paid on or before the 15th of the month; special rate for very large consumption.	1.49	1.50
Worcester ...	20.7	1.25	Discount 15 cents per M if paid on or before the 15th of the month.	1.15	1.10

65*h* 108. Gas and electric light. (Jan.

The average price paid by consumers for coal gas to the companies selling annually more than 30,000,000 feet each is $1.08 per thousand feet. If the Boston and Brookline companies be excluded the average is $1.14. The average price received by the remainder of the coal gas companies from sales by meter is $1.67, the average received by all is $1.12 per thousand. The average price for oil gas is $4.21 per thousand feet.

The average price paid by consumers for sales by meter in 1886 was $1.72; in 1887, $1.66; in 1888, $1.56; in 1889, $1.50; in 1890, $1.46; in 1891, $1.43; in 1892, $1.52; in 1893, $1.45; in 1894, $1.26; in 1895, $1.21; in 1896, $1.17; in 1897, $1.15; in 1898, $1.14.

The following table shows the amount of gas made in the year ending June 30, 1899, and in the year ending June 30, 1898; the amount sold by meter and to public lamps in both these years; the amount used at works and offices, with the amount of gas unaccounted for during the year ending June 30, 1899, and the percentage of unaccounted-for gas in both years.

NOTE.—The terms "coal gas" and "coal-gas companies" whenever used in the report are intended, unless otherwise qualified, to include all the companies except those that make their gas entirely from oil distilled in closed retorts externally fired.

66 Mr. IRWIN: Complainant also specially offers in evidence from page 108 of the same report the following:

"The average price paid by consumers for coal gas to the companies selling annually more than 30,000,000 feet each is $1.08 per thousand feet. If the Boston and Brookline companies be excluded the average is $1.14. The average price received by the remainder of the coal gas companies from sales by meter is $1.67, the average received by all is $1.12 per thousand. The average price for oil gas is $4.21 per thousand feet.

The average price paid by consumers for sales by meter in 1886 was $1.72; in 1887, $1.66; in 1888, $1.56; in 1889, $1.50; in 1890, $1.46; in 1891, $1.43; in 1892, $1.52; in 1893, $1.45; in 1894, $1.26; in 1895, $1 21; in 1896, $1 17; in 1897, $1.15; in 1898, $1.14.

Objected to as immaterial, incompetent and because no proper foundation has been laid.

Adjourned by agreement until Thursday, November 7, 1901, at 10 a. m.

Directors' room, Chicago National Bank building.

CHICAGO, ILL., THURSDAY, *November* 7, 1901,
10 o'clock a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner. Messrs. W. T. Irwin, and E. C. Risther, appearing for compl'nt. Mr. Henry Mansfield appearing for defendant.

Direct examination of FRANCIS W. LITTLE resumed by Mr. Irwin:

67 Mr. IRWIN: During this examination of Mr. Little the complainant has introduced in evidence itemized statements of the cost of complainant's plant etc., as shown on Exhibits "2 to 6" inclusive, for the purpose of getting those facts into the record as shortly and concisely as possible and in order to save expense and not encumber the record. Counsel for defendant has objected to that character of evidence and complainant is, therefore, compelled to prove such expenditures by presenting the vouchers showing the payment of the money for the respective accounts and will continue the examination of Mr. Little on that line unless counsel for defendant withdraws his objection to the competency of the statements heretofore offered in evidence.

The MASTER: Does counsel for defendant withdraw his objection to the competency of the evidence offered in that regard?

Mr. MANSFIELD: No sir.

The MASTER: Proceed Mr. Irwin.

Q. Have you with you the vouchers pertaining to the cost of the construction of the plant of the Peoria Gas & Electric Company in the city of Peoria and also the vouchers showing the expense of operating the plant?

Ans. Yes sir;

Q. Please refer to voucher No. 1, and state what it is for?

A. Voucher No. 1, if for the sum of $986.13, in favor of F. W. Little for sundry payments made by him. The voucher is dated June 20, 1899, and is receipted on June 23, 1899.

Q. Was the amount of money named in that voucher paid towards the expense of the plant, or operation of complainant's plant?

Q. The amount of money represented by that voucher was paid

out for the following purposes: viz., $491.09 was for general office sundries; $27.50 was paid for legal expenses; $42.66 was paid for stationary, printing and postage; $12.99 was paid for stable
68 expenses $411.89 was paid for materials that went into the storeroom of the Peoria Gas & Electric Company.

Q. Is that the original voucher for the payment of that amount of money?

Ans. Yes sir;

Q. Was the amount of money named in that voucher actually paid?

Ans. Yes sir;

Q. Was that the original entry of the moneys paid for the purposes named?

Ans. Yes sir; that was the original entry in the books and accounts of the Peoria Gas & Electric Company.

Q. State how these vouchers are made and what is done with them?

Ans. We use the original and duplicate voucher system; the original voucher is the evidence of the payment of the money and bears the receipt of the person to whom the money is paid by the company; the duplicate voucher is a copy of the original voucher and there is attached to it also any invoice, bills or receipts necessary to show in detail the purposes for which the voucher is made.

Q. Is this the original or duplicate voucher?

Ans. The original

Q. Do all the vouchers pertaining to this matter contain a detail of the account on which and to whom the money was paid in the cost of this plant and its operation?

A. Yes sir; the original voucher is a receipt for the money paid; the duplicate voucher is a copy of the original voucher and in addition shows in detail the person to whom and the purposes for which the money was paid; the system followed is this: The majority of the payments were made by the treasurer of the company directly to me and the expenditures were made by me; many of these vouchers will be found to run in my favor and my receipt will appear attached to the original voucher; attached to the duplicate voucher will be found the receipts of the various people to whom I paid the money, showing for what the payments to them were made by me.

Complainant's counsel offers in evidence and reads to the master voucher No. 1, in the words and figures following, to-wit:—

A

69 JUNE 23, 1899.

Received from Peoples Gas & Electric Company nine hundred eighty-six and 13/100 dollars, in full for above account.

F. W. LITTLE, *V. P.*

Objected to for the reason it is a mere summary of bills paid and it does not show upon its face to whom the several items, that go to make up the total voucher, *was* paid; and for the further reason it does not show that they were legitimate expenses that went to make up the cost of the plant.

Q. Did you receive the amount of money named in voucher No. 1, at the time of the date of that receipt?

Ans. Yes sir.

Q. What did you do with the money?

A. I paid $51.44 to Kinsey & Mahler of Peoria, Ills., for materials used in the construction of the gas plant of the Peoria Gas & Electric Company; I paid $25.29 of that money to Clark, Quien & Morse of Peoria, Ill., for 1 Fairbanks scale; I paid $39.25 to John C. Streibich of Peoria, Ill., for 1 letter press; 1 waste basket; 1½ doz. copying clothes; 2 pair banker's shears; 1 calendar; 1 dozen figuring tabs; ½ pound pins; 1 two part P. O. box; 1 National mail scale; 1 Triumph punch; 1 doz. sheets of rubber cloth; ½ dozen sheets of oil board; 2 doz. blotters; 1 cash sales box; 1 glass paper weight; 2 iron paper weights; 1 bottle red ink; 1 bottle muscilage; 1 library ink stand; 1 waste basket; 1 penholder; 2 glass paper weights; 1 doz. large bull-dog clips; 1 copying press stand; 1 200 page cash book; 1 three part P. O. file [illegible] waste basket.

I paid $22.85 to the Standard [illegible] Company for ½ bll. lard oil and the package in which it was contained; 1 bll perfection oil; 2 sixty gal. tanks; 1 ten gal. jacket can.

I paid $71.44 to the Wahlfeld Manufacturing Company of Peoria Ill., for 6 plugs for 12 in. pipe; 6 plugs for 8 in. pipe; 6 plugs for 6 in. pipe; 100 pieces of 2 x 6 pine lumber, 16 inches long;

70 100 pieces ¾ x 6 in. pine lumber, 16 inches long; 2 tool boxes; 1 drawing table, containing one drawer; 2 tressles for a drawing table; 8 pieces of ⅞ by 3 in. pine lumber; 6 plugs for 4 in. pipe; 2 rammers with iron bands; 2 straight edges; 2 pieces 4 x 4 in. clear oak; 8 feet long; 100 pieces 2 in. by 6 in. by 20 in. pine lumber; 50 pieces 1 in. by 6 in. by 20 in. pine lumber.

I paid to the Central Electric Company of Peoria, Ill., $29.14 for, 18 sockets; 18 bushings; 2 tubes; 65 feet weather-proof wire; knobs; 50 ft. of circular loom; one 25 ampere fuse box; 23 incandescent lamps; for 12 hours labor of electrician and helper installing above material in the office of the Peoria Gas & Electric Company in Peoria, Illinois, 6 electric shades; short piece of weather-proof wire; 1 wall socket; 1 lamp and for putting in electric call bells in the office of the Peoria Gas & Electric Co., at Peoria, Ill.

I paid $12.25 to A. Hubinger of Peoria, Ill., for the following articles:—1 wall map of the city of Peoria, mounted.

I paid $12.40 to the Brunner Stamp & Stencil Works of Peoria, Ill., for rubber stamps.

I paid $13.97 to J. W. Franks & Sons of Peoria, Illinois, for the

following articles:—1000 receipts, bound in 10 books; 100 discharge tickets; 1000 daily cash reports; 1000 blanks.

I paid $172.37 to Kinsey & Mahler of Peoria, Illinois for the following articles:—24— 1½ in. by 1¼ in. bushings;—8⅝ by 3½, machine bolts; 4—⅝ by 6 in. machine bolts; 12—⅝ in. iron washers; 12¾ in. iron washers; 2 No. 2 Barnes pipe cutters; 1 set No. 2½ Harmony stock & dies; 1 mallable iron pipe vise; 2—1 in. hose nickels; 2—inch by 2 in. nipples; two ¼ in. by 2 in. nipples; two ⅜ in. by ¼ in. bushings; 2 sets No. 3 Harmony stock & dies; 1 No. 2 frame pipe vise; 1 piece 1½ in. black pipe, 7 feet long; two 1½ in. threads cut thereon; one 1½ in. plug, drilled and capped for ⅜ in. pipe; 1 air pump; one
1 in. male hose nipple; two 1 in. female hose couplings; two
71 1 in. Sherman hose clamps; 15 feet of 1 in. 3 ply hose; one
1 in. brass steam cock; 1 No. 6 mall-able iron wrench; 1 air pump; one 1 in. male hose nipple; two 1 in. female hose nipples; two 1 in. Sherman hose bands; 15 feet 1 in. 3 ply hose; one 1 in. brass steam cock; 1 No. 6 mallable iron wrench; 55 pounds 4 in. cast iron plugs; 47 pounds 6 in. cast iron plugs; two 2 in. plugs, one 2 in. plug with 3 in. hole tapped in the head; 150 feet 2½ in. fire hose; one 2 in. by 1 in. mallable "T;" one 2½ Ludlog gate valve; one 2½ in. brass female hose coupling; with white thread on the tail piece; 3 pounds special brass hose nipples; for ¾ hour labor spent on same; six 1 in. hose nipples; two 1 in. long nipples; two ¼ in. long nipples; two ⅜ in. by ¼ in. bushings; 303 pounds 2 in. galvanized street "L's;".

I paid $16.91 to John C. Streibich of Peoria, Ill. for the following articles:—1 ink well; 1 five hundred page copy book; 1 doz. cloths; 1 doz. oil boards; 1 doz. blotters; 1 doz. No. 140 blotters cut to size; 1 pound assorted rubber bands; 1 qt. Arnold's fluid; 2 wire desk baskets; 1 porcelain bowl; 1 brush; six 500 page letter books.

I paid to Kinsey & Mahler of Peoria, Ill. $17.96 for the following articles:—24 feet of ⅜ in. pipe; 24 1½ in nipples; four ⅜ in. threads; four ⅜ in. caps; 24—1½ in. by 1¼ in. reducers; 4 pair 1¼ in. crane steel pipe tongs; twelve 1½ in. plugs; 24—2 in. couplings; 8—¾ in. couplings; 6—2 in. galvanized "T's;" 6 No. 3 Saunder Hite cutter wheels; 2—¾ in. threads, cut on spades; 4—¾ in. threads cut on pipes; 2 pieces ¾ in. black pipe; 1 pouring clamp.

I paid to Martin Rehfuss, Jr., of Peoria, Ill., $12.99 for, one set single harness; one neck strap and one whip.

I have the receipt of the various parties above mentioned for all of these payments.

I paid $487.86 for sundry purchases the receipts for such
72 payments being now mislaid and a search for them is now being made.

Mr. IRWIN: We will not wait to look up those receipts but will ask leave to introduce them when they are found.

Q. Have you the original receipts for the paying out of the several amounts of money to the respective parties named for the material therein named?

Ans. I have.

Q. Did all that material go into the plant and office fixtures of the Peoria Gas & Electric Company in Peoria, Ill.?

Ans. It did.

Q. Have you the original receipts for the paying out of said respective amounts of money now in your hands in court for inspection?

Ans. I have.

Q. Will you now refer to voucher No. 2?

Ans. I have it here.

The MASTER: Let me suggest to you gentlemen now, that I will not permit you to go on with this examination in this way. It is a farce in my opinion. I think some method can be devised by which this examination can be expedited. The rules of court gives the master authority and power to direct the mode in which matters pertaining to the controversy and the matters regarding evidence shall be proved before him etc.

Mr. IRWIN: I have a suggestion to make with regard to that matter which I will present in a few minutes.

Q. What amount of money does voucher No. 2 represent?

Ans. $408.05.

Q. To whom paid?

Ans. Paid to me.

Q. Is the voucher you have produced here the original voucher for the payment of that money?

Ans. It is.

Complainants counsel offers in evidence and reads to the master voucher No. 2 identified by the witness, as follows, to-wit:

"JUNE 23, 1899.

Received from the Peoples Gas & Electric Company four hundred eighteen and 05/100 dollars. In full for above account.

F. W. LITTLE, *V. P.*"

73 Objected to by defendant unless the receipts for which the voucher was issued are produced in court for the purpose of inspection.

Q. Have you with you the original receipts for which this money was paid?

Ans. I believe I have them all.

Q. Have you them with you in court?

Ans. I have.

Q. Do they represent the paying out by you of the amount of money named in voucher No. 2?

Ans. They do.

Mr. IRWIN: Now then, if the master please, we take the position

that if counsel for defendant insists the complainant will have to introduce in evidence each of the items that go to make up the amount of this voucher as we did in reference to voucher No. 1, and we want counsel for defendant at this time to elect whether he will compel us to introduce each of the sub-vouchers showing the payment of this money.

Mr. MANSFIELD: My understanding is that the vouchers and sub-vouchers will be subject to inspection by counsel for defendant at any time he requires it?

Mr. IRWIN: Yes, sir; during the examination of this witness.

Mr. MANSFIELD: I am willing to admit that if I have the privilege of looking over the vouchers and sub-vouchers and asking questions with regard to any items that appear in the receipts given by the different parties which go to make up the sum total of the vouchers.

Mr. IRWIN: Of course, so far as Mr. Little's examination is concerned. We want it limited to his examination. We do not want to go over this same thing time and time again during the progress of the hearing, but so long as Mr. Little's examination proceeds these vouchers will be subject to inspection in court whenever wanted by counsel for his inspection or for use in cross-examination, and for general purposes, the vouchers will always be sub-
74 ject to inspection by the court, master or counsel.

The MASTER: Is this a stipulation?

Mr. IRWIN: It is a proposition, but I am willing to make a stipulation with regard to it.

The MASTER: If counsel don't make a stipulation with reference to this, the master will direct the mode in which this proof shall go in and counsel will be obliged to follow it unless a modification of it is obtained from the court.

It is hereby stipulated by counsel for the respective parties that the original vouchers shall be offered in evidence and read into the record, and the duplicate, or sub-vouchers showing for what the money was paid, shall remain in court during the progress of the examination of the witnesses, and shall at all times be subject to inspection by the court, master or counsel during the progress of this hearing for verification of the original vouchers offered in evidence and for the purpose of cross-examination.

Q. What was done with the amount of money named in voucher No. 2?

Ans. It was paid for materials which entered into the construction of the plant and property of the Peoria Gas and Electric Co.

Mr. MANSFIELD: The defendant objects to that unless it was used in the construction of the gas plant, or used for the purpose of carrying on the business of the gas company, in contra-distinction to the electric light company.

Q. Was the amount of money named in voucher No. 2, expended

in and about the plant and business of the gas plant and business of the complainant company?

Ans. Yes sir.

(Mr. RITSHER:)

Q. In all cases in this examination where you have referred to the plant of the Peoria Gas & Electric Company, and the business of said company, have you referred solely to the gas plant and the gas business of said company?

Ans. I have.

75 (The SAME:)

Q. And in all future questions that may be asked you if your answer refers to anything else will you so state?

A. I will.

(Mr. IRWIN, resuming:)

Q. Have you with you vouchers for all the moneys that were expended and paid out in and about the purchase, construction, completion and operation of the gas plant of the Peoria Gas & Electric Company in the city of Peoria, Illinois, from the time and including the organizations of that company and up to and including August 31, 1901, in addition to those you have already testified about?

Ans. I have, yes sir.

Q. Have you also the duplicate or sub-vouchers showing to whom and for what purpose each amount of money was applied in and about the organization, purchase, construction and operation of the gas plant of the Peoria Gas & Electric Company in the city of Peoria beginning with the inception of the company and coming up to and including August 31, 1901, in addition to those you have already testified about?

Ans. Yes sir.

Q. Will you now refer to the several original vouchers in their numerical order and state the amount of money that was paid out as shown by each voucher in and about the organization, purchase, construction, completion and operation of the gas plant of the Peoria Gas & Electric Company beginning with its inception and running up to and including August 31, 1901, naming in each instance the payee, and the account to which the same was charged, including the date, the account, the amount paid and the payee?

A. Voucher No. 1, is dated June 20, 1899, is in favor of F. W. Little for $986.13. This voucher was charged to the following accounts: To account No. 3 $491.09; to account No. 9 $27.50; to account No. 10 $42.66; to account No. 11 $12.90; to account No. 41 $411.69.

76 Voucher No. 2, is dated June 20, 1899, and is for the sum of $416.05 being money paid to F. W. Little, vice president, and the entire amount of the voucher was charged to account No. 41.

Voucher No. 3, is dated June 20, 1899, amount $437.51, in favor of F. W. Lttle, vice president, and the amount of the voucher was charged as follows:—To account No. 3 $14.94; to account No. 11 $148.30; to account No. 10 $40; to account No. 41 $273.87.

Voucher No. 4, is dated June 20, 1899, amounts to $12.500; is drawn in favor of F. W. Little and is for services as engineer and superintendent of construction of the gas plant of the Peoria Gas & Electric Company. The entire amount of the voucher was charged to the general plant account of the company.

Voucher No. 5, is dated June 20, 1899, for the sum of $2582.03, drawn in favor of F. W. Little, vice president, and was charged as follows:—To acct. No. 10 $21; to acct. No. 41 $2561.03.

Voucher No. 6, is dated June 20, 1899, amounting to $8595.22, drawn in favor of L. A. Walton, treasurer, and was charged as follows:—$5000 was charged to city of Peoria deposit account and $3595.22 was charged to sundries account.

Voucher No. 7, is dated June 20, 1899, amount $11.05; drawn in favor of L. A. Walton, treasurer, and the entire amount was charged to account No. 10.

Voucher No. 8, is dated June 20, 1899, amount $280.03, drawn in favor of F. W Little, vice president, and the amount was charged to the following accounts:—To acct. No. 3 $1.50; to acct. No. 6 $50; to acct. No. 10 85c.; to acct. No. 11 $214.05; to acct. No. 41 $13.63.

Voucher No. 9, is dated June 20, 1899, amount $352.55, was drawn in favor of F. W. Little, vice president, and was charged to the following accounts:—To acct. No. 1 $300; to acct. No. 41 $42.55; to acct. No. 3 $10.

Voucher No. 10, is dated June 20, 1899, amounts to $3.00, was drawn in favor of the American Gas Light Journal, and the entire amount of the voucher was charged to account No. 3.

77 Voucher No. 11, dated June 20, 1899, amounting to $110, drawn in favor of The A. H. Andrews Company; the entire amount of the voucher was charged to acct. No. 38.

Voucher No. 12, dated June 20, 1899, amount $38; drawn in favor of Amberg File & Index Company; charged to acct. No. 38.

Voucher No. 13, dated June 20, 1899, amount $62.13, was drawn in favor of the Baker-Vawter Company and the entire amount charged to account No. 10.

Voucher No. 14, dated June 20, 1899, amount $36; drawn in favor of the Crerer-Adams Company, and the entire amount of the voucher was charged to account No. 41.

Voucher No. 15, dated June 20, 1899, amount $206.85; drawn in favor of Jas. B. Clow & Sons, and the entire amount is charged to acct. No. 41.

Voucher No. 16, dated June 20, 1899, for the sum of $74.08, in favor of Eugene Deidzgen Company was charged as follows:—to acct. No. 23, $4.29; to acct. No. 41 $69.79.

Voucher No. 17, dated June 20, 1899, amount $15.38; drawn in favor of The Goheen Manfg. Co., charged to account No. 41.

Voucher No. 18, dated June 20, 1899, amount $3; drawn in favor of The Globe Company, charged to account No. 38.

Voucher No. 19, dated June 20, 1899, amount $40; drawn in favor of The D. B. T. Goodrich Company, charged to account No. 41.

Voucher No. 20, dated June 20, 1899, drawn in favor of Geo. Light, amount $160.80, charged to account No. 41.

Voucher No 21, dated June 20, 1899, amount $4, drawn in favor of E. B. Myers & Co., charged to account No. 3.

Voucher No. 22, dated June 20, 1899, amount $3; drawn in favor of Progressive Age; charged to account No. 3.

Voucher No. 23, dated June 20, 1899, amount $126.70; drawn in favor of P. F. Pettibone & Co., charged to account No. 10.

Voucher No. 24, dated June 20, 1899, amount $48; drawn in favor of The Ryan & Hart Company, charged to account No. 10.

78 Voucher No. 25, dated June 28, 1899, amount $12,553.25; drawn in favor of United States Cast Iron Pipe & Foundry Company, charged to account No. 41.

Voucher No. 26, dated July 27, 1899, amount $667.77; drawn in favor of F. W. Little, vice pres. The voucher don't show to what accounts it is charged; I suppose the pay-roll would have to test vouchers No. 26 and 27.

Voucher No. 27, dated July 27, 1899, amount $2253.70; drawn in favor of F. W. Little, vice president; the voucher don't show the account to which it is charged; same as No. 26.

Voucher No. 28, dated June 30, 1899, amount $250; drawn in favor of the Chicago national bank and is charged to interest acct. or acct. No. 7.

Voucher No. 29, dated June 30, 1899, amount $50; drawn in favor of C. D. Organ, charged to account No. 1.

Voucher No. 30, dated June 30, 1899, amount $300; drawn in favor of F. W. Little and charged to account No. 1.

Voucher No. 31, dated June 30, 1899, amount $9.71; drawn in favor of the Equitable Trust Company and is charged as follows:—To acct. No. 3, $1.11; to acct. No. 10, $5.10; to acct. No. 38 $3.50.

Voucher No. 32, dated July 13, 1899, amount $423.59; drawn in favor of F. W. Little, vice president, and is charged as follows:—To acct. No. 3 $30.98; to acct. No. 4 $1.25; to acct. No. 6 $25.50; to acct. No. 10 $9.57; to acct. No. 11 25c.; to acct. No. 41 $356.04.

Voucher No. 33, dated July 13, 1899, is for $5373.58; drawn in favor of F. W. Little, vice president, and was charged to the following accounts:—To acct. No. 3 $20.73; to acct. No. 6 $10.30; to acct. No. 10 $19.56; to acct. No. 11 $37.58; to land and buildings $7.50; to acct. No. 41 $4196.96; to legal expenses $1080.95.

Voucher No. 34, dated July 13, 1899, is for $408.29; drawn in favor of F. W. Little, vice pres. and is charged to the following accounts:—To acct. No. 2 $37.50; to acct. No. 3 $53.62; to

79 acct. No. 6 $54.43; to acct. No. 10 $5.45; to acct. No. 11 70c.; to acct. No. 41 $17.19; to land and buildings $15.40; to legal expenses $24; to sundries $200.

Voucher No. 35, dated July 13, 1899, amount $50; drawn in favor of Amberg File & Index Company and charged to acct. No. 3.

Voucher No. 36, dated July 13, 1899, amount $25.25, drawn in favor of Baker-Vawter Company and charged to account No. 10.

Voucher No. 37, dated July 13, 1899, amount $1920.18; drawn in favor of James B. Clow & Sons, and charged to account No. 41.

Voucher No. 38, dated July 13, 1899, amount $2.74; drawn in favor of Chicago Directory Company and charged to account No. 3.

Voucher No. 39, dated July 13, 1899, amount $45; drawn in favor of H. Channon Company and charged to account No. 41.

Voucher No. 40, dated July 13, 1899, amount $44.50; drawn in favor of the Goheen Manfg. Co., and charged to account No. 41.

Voucher No. 41, dated July 13, 1899, amounting to $102.04; drawn to the order of Hatch & Ritsher and charged to legal expenses.

Voucher No. 42, dated July 13, 1899, amounting to $26.40; drawn in favor of George Light and charged to account No. 41.

Voucher No. 43 dated July 13, 1899, amounting to $7.60; drawn in favor of Library Bureau and charged to account No. 10.

Voucher No. 44, dated July 13, 1899, amounting to $5.40; drawn in favor of H. Mueller Manfg. Co., and charged to account No. 41.

Voucher No. 45, dated July 21, 1899, amounting to $35.50; drawn in favor of P. F. Pettibone & Co., and charged to account No. 10.

Voucher No. 46, dated July 13, 1899, amounting to $18; drawn in favor of the Ryan & Hart Company and charged to account No. 10.

Voucher No. 47, dated July 13, 1899, amounting to $12.726.56; drawn in favor of the United States Cast Iron Pipe & Foundry Company and charged to account No. 41.

80 Voucher No. 48, dated July 27, 1899, amounting to $2439.27; drawn in favor of F. W. Little, vice president, covers the pay roll for the first half of June and the voucher does not show to what accounts the payment was charged.

Voucher No. 49, dated July 27, 1899, amounting to $2908.29; drawn in favor of F. W. Little, vice president, covers the pay roll for the second half of June 1899, and the voucher does not show to what accounts the amount of the voucher was charged.

Voucher No. 50, dated July 27, 1899, amounting to $3.50; drawn in favor of F. W. Little, vice president, covers an error in the pay roll for the first half of June 1899, and the voucher does not show to what accounts it was charged.

Voucher No. 51, (missing)

The following vouchers No. 52 to No. 72 inclusive, are all dated in the month of August 1899, and registered in July 1899.

Voucher No. 52 is for $527.76; drawn in favor of Chicago national bank and charged to interest account or account No. 7.

Voucher No. 53, amounting to $6; drawn in favor of Equitable Trust Company and charged to account No. 2.

Voucher No. 54, is for $1229.62, drawn in favor of F. W. Little, V. P. and is charged to the following accounts:—To account No. 3

$49.27; to account No. 5 $26.75; to acct. No. 10 $28.80; to acct. No. 11 $47.08; to acct. No. 41 $1051.47; to legal expenses $23.25.

Voucher No. 55, is for $300; in favor of F. W. Little and is charged to account No. 1.

Voucher No. 56, is for $50, in favor of C. D. Organ and is charged to account No. 1.

Voucher No. 57, is for $108.85, in favor of the H. Mueller Manfg. Co., and is charged to acct. No. 41.

81 Voucher No. 58, is for $994.52, in favor of the John Davis Company and charged to acct. No. 41.

Voucher No. 59, is for $21.887.16, drawn in favor of the United States Cast Iron Pipe & Foundry Company and charged to acct No. 41.

Voucher No. 60 is for $2684.87, drawn in favor of F. W. Little, V. P. and was charged to the following accounts:—To acct. No. 2 $35.85; to acct. No. 3 $32.16; to acct. No. 6 $61.24; to acct. No. 10 $8.25; to acct. No. 11 $8.50; to acct. No. 41 $2523.07; to legal expenses $15.20.

Voucher No. 61 is for $8490.74 in favor of F. W. Little, V. P. and covers the pay roll for the first and second halves of July 1899, and the voucher does not show to what accounts it was charged.

Voucher No. 62 is for $19.21, in favor of Dayles Engineering Co., and charged to acct. No. 41.

Voucher No. 63 is for $27 in favor of James B. Clow & Sons and charged to acct. No. 41.

Voucher No. 64 is for $125, in favor of Crane Company and charged to acct. No. 41.

Voucher No. 65 is for $18.50 in favor of the Globe Company and charged to acct. No. 41.

Voucher No. 66 is for $365 in favor of the Employés Liability Assurance C-rporation and is charged to insurance acct. or acct. No. 5.

Voucher No. 67 is for $78 in favor of the Goheen Manfg. Co., and charged to acct. No. 41.

Voucher No. 68 is for $3.70 in favor of Library Bureau and charged to account No. 10.

Voucher No. 69 is for $5.40, in favor of the Mallable Manfg. Co., and charged to acct. No. 41.

Voucher No. 70 is for $208, in favor of the Peoples Gas Light & Coke Company and charged to acct. No. 41.

Voucher No. 71 is for $60.50, in favor of the Ryan & Hart Company, and charged to acct. No. 10.

82 Voucher No. 72 is for $101.50 in favor of the Springfield Paving Brick Company and charged to acct. No. 41.

The following vouchers No. 73 to No. 91 inclusive are dated in September 1899, and registered in August 1899, viz:

Voucher No. 73 amount $18.70, in favor of the Equitable Trust Co., charged to acct. No. 3.

Voucher No. 74 amount $300 in favor of F. W. Little, charged to acct. No. 1.

Voucher No. 75 for $50, in favor of C. D. Organ, charged to acct. No. 1.

Voucher No. 76 for $690.94, in favor of the Chicago national bank, and charged to acct. No. 7, or interest account.

Voucher No. 77 is for $1267.92, in favor of the John Davis Company, and is charged to storeroom or acct. No. 41.

Voucher No. 78 is for $758.36 in favor of F. W. Little, vice president and is charged to the following accounts:—To acct. No. 3 $32.28; to acct. No. 6 $6.16; to acct. No. 9 $23.95; to acct. No. 10 $1.18; to acct. No. 41 $694.79.

Voucher No. 79 is for $207.79, in favor of F. W. Little vice president and is charged to the following accounts:—To acct. No. 2 $31.75; to acct. No. 3 $9.60; to acct. No. 9 $1.00; to acct. No. 10 $12.98; to acct. No. 41 $152.46.

Voucher No. 80 is for $2015.29, in favor of F. W. Little vice president and is charged to the following accounts:—To acct. No. 3 $6.30; to acct. No. 10 $8.25; to acct. No. 11 $38.50; to acct. No. 41 $1962.24.

Voucher No. 81 is for $12.229.86, in favor of F. W. Little, vice president, and is charged to the following accounts:—To acct. No. 1 $266.67; to acct. No. 2 $557.94; to acct. No. 32 $292.95; to acct. No. 33 $8364.09; to acct. No. 34 $1597.50; to acct. No. 36 $966.67; to acct. No. 37 $2.25; to acct. No. 41 $170.29; to Parker-Russell $11.50.

Voucher No. 82 amounts to $19.50 in favor of Baker–Vawter Company and is charged to acct. No. 10.

83 Voucher No. 83 amounts to $10 in favor of Hatch & Ritsher and is charged to acct. No. 9.

Voucher No. 84 amount $37 in favor of Library Bureau, charged to acct. No. 10.

Voucher No. 85 amount $13.50, in favor of George Light charged to acct. No. 41.

Voucher No. 86 amount $2.60, in favor of P. F. Pettibone & Co., charged to acct. No. 10.

Voucher No. 87 amount $16.50 in favor of the Ryan & Hart Company charged to acct. No. 10.

Voucher No. 88 is for $5754.11, in favor of the United States Cast Iron Pipe & Foundry Company, charged to acct. No. 41.

Voucher No. 89 amount $78.55 in favor of the Western Gas & Construction Company, charged to acct. No. 41.

Voucher No. 90 amount $1.40 in favor of the Whitman & Barnes Manfg. Company, charged to acct. No. 41.

Voucher No. 91 is for $27.13, in favor of Deitrichs Valve Olium Oil Co., charged to acct. No. 41.

The following vouchers No. 92 to No. 128 inclusive, are dated in October 1899 and registered in September 1899, viz:—

Voucher No. 92 is for $115.09, in favor of the Crown Fire Clay Company and was charged to acct. No. 41.

Voucher No. 93 is for $784.70 in favor of the Chicago national bank and was charged to acct. No. 7 or interest account.

Voucher No. 94 is for $1.45 in favor of the Equitable Trust Co., and was charged to acct. No. 3.

Voucher No. 95 is for $300 in favor of F. W. Little, charged to acct. No. 1.

Voucher No. 96 amount $50, in favor of C. D. Organ, charged to acct. No. 1.

Voucher No. 97 is for $1405.25 in favor of the John Davis Company charged to acct. No. 41.

84 Voucher No. 98 is for $612.32 in favor of F. W. Little, vice president and is charged to the following accounts:—To acct. No. 3 $16.01; to acct. No. 6 $52.64; to acct. No. 10 $5.40; to acct. No. 41 $453.37; to legal expenses $20; to Parker-Russell $64.90.

Voucher No. 99 amounts to $1798.29 is in favor of F. W. Little vice president and is charged to the following accounts:—To acct. No. 3 $11.70; to acct. No. 9 $34.50; to acct. No. 10 $5; to acct. No. 11 $75; to acct. No. 34 $850; to acct. No. 41 $765.99; to John Davis Company $56.10;

Voucher No. 100 is for $2257.20 in favor of F. W. Little, vice pres: and is charged to the following accounts:—To acct. No. 41 $2214.40; to Parker-Russell $42.80.

Voucher 102 is for $198.15, in favor of F. W. Little, vice pres. and is charged to the following accounts:—To acct. No. 10 $3.50; to acct. No. 11 $28; to acct. No. 41 $166.65.

Voucher No. 101 is for $541.23 in favor of F. W. Little, vice pres. and is charged to account No. 41.

Voucher No. 103 is for $199.65 in favor of F. W. Little vice pres't and is charged to the following accounts:—To acct. No. 3 $3.29; to acct. No. 10 $2.05; to acct. No. 11 $7.75; to acct. No. 41 $186.56.

Voucher No. 104 is for 56c. in favor of F. W. Little and is charged to acct. No. 3.

Voucher No. 105 is for $2500 in favor of the Western Gas Construction Company and is charged to that company.

Voucher No. 106 is for $1556.34 in favor of the John Davis Company and is charged to acct. No. 41.

Voucher No. 107 is for $283.25 in favor of F. W. Little vice pres't and is charged to the following accounts:—To acct. No. 3 $9.56; to acct. No. 41 $273.69.

Voucher No. 108 is for $2768.60, in favor of F. W. Little vice pres't and is charged to the following accounts:—To acct.

85 No. 2 $26.25; to acct. No. 3 52c.; to acct. No. 10 $2.71; to acct. No. 34 $2000; to acct. No. 41 $739.12.

Voucher No. 109 is for $4526.54 in favor of F. W. Little vice pres't and covers the pay-roll for the first half of September 1899, and the voucher does not show to what accounts these charges were made.

Voucher No. 110 is for $5738.27 in favor of F. W. Little vice

pres't and covers the pay-roll for the second half of September 1899, and the voucher does not show to what accounts it was charged.

Voucher No. 111 is for $75.92 in favor of F. W. Little vice pres't and *are* charged to the following accounts:—To acct. No. 11 $25.72; to acct. No. 41 $50.20.

Voucher No. 112 is for $5.25 in favor of James B. Clow & Sons and was charged to account No. 41.

Voucher No. 113 is for $320 in favor of Connelly Iron Sponge & Governor Company and was charged to acct. No. 41.

Voucher No. 114 is for 87c. in favor of the George Cutter Company and was charged to acct. No. 41.

Voucher No. 115 is for $6.08 in favor of Eugene Deidzgen & Co. and was charged to acct. No. 41.

Voucher No. 116 is for $342.03 in favor of the Electric Appliance Company and was charged to acct. No. 41.

Voucher No. 117 is for $7.20 in favor of the D. F. Goodrich Company and was charged to acct. No. 41.

Voucher No. 118 is for $516.85 in favor of the Illinois Electric Company and was charged to acct. No. 41.

Voucher No. 119 is for $20 in favor of George Light and charged to acct. No. 41.

Voucher No. 120 is for $353.36 in favor of Lindsley Bros. Co., and was charged to acct. No. 41.

Voucher No. 121 is for $20 in favor of Manville Covering Company and was charged to acct. No. 41.

86 Voucher No. 122 is for $316.74 in favor of the Raymond Lead Co., and was charged to acct. No 41.

Voucher No. 123 is for $56.50 in favor of the Ryan & Hart Company and was charged to account No. 10.

Voucher No. 124 is for 85c. in favor of the Springfield Pipe Joining Company and was charged to acct. No. 41.

Voucher No. 125 is for $11,478.85 in favor of the United States Cast Iron Pipe & Foundry Company and was charged to acct. No. 41.

Voucher No. 126 is for $5472.50 in favor of John A. Roeblings, Sons Company and was charged to acct. No. 41.

Voucher No. 127 is for $40.60 in favor of the Western Gas Construction Company and was charged to acct. No. 41.

Voucher No. 128 is for $13.60 in favor of the Akron Gas Company and was charged to account No. 6.

The following vouchers No. 129 to 176 inclusive were registered in October and paid in October and November 1899.

Voucher No. 129 is for $1482.26 in favor of the John Davis Company and was charged to acct. No. 41.

Voucher No. 130 is for $38.12 in favor of John Roeblings, Sons Company and charged to acct. No. 41.

Voucher No. 131 is for $1405.96 in favor of John Davis Company and charged to acct. No. 41.

Voucher No. 132 is for $300 in favor of F. W. Little and charged to account No. 1.

Voucher No. 133 is for $50 in favor of C. D. Organ and charged to account No. 1.

Voucher No. 134 is for $944.40 in favor of the Chicago National Bank and charged to interest or acct. No. 7.

Voucher No. 135 is for $6.40 in favor of the Equitable Trust Co., and is charged to acct. No. 3 $1.40; to acct. No. 10 $5.

87 Voucher No. 136 is for $552.42 in favor of Lindsley Bros. Co., and charged to acct. No. 41.

Voucher No. 137 is for $4289.18 in favor of F. W. Little, vice pres't and covers the pay roll for the first half of October, 1899, and does not show to what accounts it was charged.

Voucher No. 138 is for B $2702.93 in favor of F. W. Little, vice pres't and is charged as follows:—To acct. No. 3, $13.35; to acct. No. 10 $5.20; to acct. No. 41 $2684.38.

Voucher No. 139 is for $536.15 in favor of F. W. Little vice pres't and is charged as follows:—To acct. No. 3 $50.78; to acct. No. 10 $5.77; to acct. No. 11 $125; to acct. No. 41 $334.60.

Voucher No. 140 is for $1170.97 in favor of F. W. Little vice pres't and is charged as follows:—To acct. No. 3 $1.36; to acct. No. 41 1169.61.

Voucher No. 141 is for $454.36 in favor of F. W. Little vice pres't and is charged to acct. No. 41.

Voucher No. 142 is for $2292.01 in favor of F. W. Little vice pres't and is charged as follows:—To acct. No. 3 $33.32; to acct. No. 6 $87.12; to acct. No. 10 $5.40; to acct. No. 34 $2066; to acct. No. 41 $100.17.

Voucher No. 143 is for $622.95 in favor of F. W. Little vice pres't and is charged as follows:—To acct. No. 9 $1; to acct. No. 10 $2; to acct. No. 11 $40; to acct. No. 41 $19.55; to acct. No. 34 $600.

Voucher No. 144 is for $419.55 in favor of F. W. Little vice pres't and is charged as follows:—To acct. No. 41 $418.05; to acct. No. 3 $1.50.

Voucher No. 145 is for $155.51 in favor of F. W. Little vice pres't and charged to acct. No. 41.

Voucher No. 146 is for $97.12 in favor of F. W. Little vice pres't and is charged—to acct. No. 3 $175; to acct. No. 41 $95.37.

Voucher No. 147 is for $257.25 in favor of Perrigo & Sons and charged to acct. No. 41.

Voucher No. 148 is for $134.95 in favor of William Paragwanoth & Sons and charged to acct. No. 41.

88 Voucher No. 149 is for $250.23 in favor of F. W. Little vice pres't and is charged as follows:—To acct. No. 2 $48.85; to acct. No. 3 $2.74; to acct. No. 9 $3.50; to acct. No. 10 $8.43; to acct. No. 11 $28.86; to acct. No. 41 $157.85.

Voucher No. 150 is for $1555.1# in favor of F. W. Little vice pres't and is charged; to acct. No. 3. $2.72; to acct. No. 9 $30; to acct. No. 10 $6.47; to acct. No. 41 $1515.94.

Voucher No. 151 is for $5558.06 in favor of F. W. Little vice pres't

and covers the pay roll for the second half of October 1899, and the voucher does not show to what accounts it was charged.

Voucher No. 152 is for $119.79 in favor of F. W. Little vice pres't and charged to account No. 41.

Voucher No. 153 is for $151.04 in favor of F. W. Little vice pres't and is charged to the following accounts:—To acct. No. 3 $2.97; to acct No. 41 $148.07;

Voucher No. 154 is for $297 in favor of John A. Roeblings & Sons Company and charged to acct. No. 41.

Voucher No. 155 is for $13 in favor of Baker-Vawter Company and charged to acct. No. 10.

Voucher No. 156 is for $269.02 in favor of Central Electric Company and charged to account No. 41.

Voucher No. 157 is for $5.24 in favor of James B. Clow & Sons and is charged to acct. No. 41.

Voucher No. 158 is for $1.14 in favor of Crown Fire Clay Company and is charged to acct. No. 41.

Voucher No. 159 is for $26.25 in favor of William M. Crane Company and is charged to acct. No. 41.

Voucher No. 160 is for 36c. in favor of Crane Company and charged to account No. 41.

Voucher No. 161 is for $296.80 in favor of the Electric Appliance Company and charged to acct. No. 41.

89 Voucher No. 162 is for $450 in favor of the Employers' Liability & Assurance Corporation and charged to acct. No. 5.

Voucher No. 163 is for $10.89 in favor of the B. P. Goodrich Company and charged to acct. No. 41.

Voucher No. 164 is for $79.50 in favor of the Goheen Manfg. Co., and charged to acct. No. 41.

Voucher No. 165 is for $135 in favor of the Illinois Electric Company and charged to acct. No. 41.

Voucher No. 166 is for $1055.46 in favor of the Lindsley Bros. Company and charged to acct. No. 41.

Voucher No. 167 is for $64.60 in favor of Library Bureau and charged as follows:—To acct. No. 10 60c.; to acct. 41 $64.

Voucher No. 168 is for $28.80 in favor of George Light and charged to acct. No. 41.

Voucher No. 169 is for $6.50 in favor of Manville Covering Co., and charged to acct. No. 41.

Voucher No. 170 is for $25.50 in favor of B. F. Pettibone & Co., and charged to acct. No. 10.

Voucher No. 171 is for $66.60 in favor of the Pittsburgh Transformer Company and charged to acct. No. 41.

Voucher No. 172 is for $5 in favor of the Ryan & Hart Company and charged to acct. No. 10.

Voucher No. 173 is for $35.25 in favor of the Standard Oil Co., and charged to acct. No. 41.

Voucher No. 174 is for $2401.96 in favor of the United States Cast Iron Pipe & Foundry Company and charged to acct. No. 41.

Voucher No. 175 is for $3081.89 in favor of the Westinghous Electric Manfg. Co., and charged to acct. No. 41.

Voucher No. 176 is for $101.40 in favor of the Western Electri Company and charged to acct. No. 41.

Adjourned by agreement until Friday, November 8, 1901, a 10 a. m.

90 Directors' room, Chicago National Bank bldg.

CHICAGO, ILL., FRIDAY, *November* 8, 1901—10 a. m.

Parties met pursuant to adjournment.

Present:—Judge I. C. Pinkney, special commissioner. Messr W. T. Irwin and E. C. Ritsher appearing for complainant. M Henry Mansfield appearing for defendant.

Direct examination of FRANCIS W. LITTLE resumed by M Irwin:

(Witness resuming:) The following vouchers No. 177 to No. 22 inclusive were registered in November 1899, and paid in Novemb and December 1899, viz:—

Voucher No. 177 amount $1293.63, drawn in favor of John A Roebling Sons Company and charged to account No. 41.

Voucher No. 178 amount $1041.64, drawn in favor of the Chicag national bank and charged to interest acct. or acct. No. 7.

Voucher No. 179 amount $75 in favor of C. D. Organ and charge to acct. No. 1.

Voucher No. 180 amount $300 in favor of F. W. Little charged acct. No. 1.

Voucher 181 amount $518.48, in favor of F. W. Little vice pre and charged to acct. No. 41.

Voucher No. 182 amount $821.48 in favor of F. W. Little vi pres. and charged to acct. No. 41.

Voucher No. 183 amount $5553.87 covers the pay roll for the fir half of November 1899, is drawn to the order of F. W. Little vi pres. and the voucher does not show to what accounts it is charge

Voucher No. 184 amount $1201.66 drawn to the order of F. W Little vice president, and charged as follows:—To acct. No. 11 $97.4 to acct. No. 41 $1104.26.

Voucher No. 185 amount $2007.60 drawn to the order of F. W Little vice pres't and charged to the following accounts:—T

91 acct. No. 11 $100; to acct. 32 $14.95; to acct. No. 41 $1892.6

Voucher No. 186 is for the sum of $2500, drawn to th order of A. Lucas & Sons, and charged to A. Lucas & Sons.

Voucher No. 187 is for the sum of $5000, drawn to the order Parker-Russell Mining & Manfg. Company and charged to that firm

Voucher No. 188 amounting to $267, drawn to the order Lindsley Bros. Co., and charged to acct. No. 41, or storeroom.

Voucher No. 189 is for the sum of $697.95, drawn to the order Snider-Hughes Company and charged to acct. No. 41.

Voucher No. 190 amounting to $1893.81 drawn to the order of the Biggs Boiler Works and charged to acct. No. 41.

Voucher No. 191 amounting to $5484.96, drawn to the order of F. W. Little, vice pres't covers the pay roll for the second half of November and the voucher does not show to what account it was charged.

Voucher No. 192 is for the sum of $6.38, drawn to the order of F. W. Little, vice pres't and charged to account No. 41.

Voucher No. 193 is for the sum of $3814.20, is drawn to the order of F. W. Little, vice pres't and charged to acct. No. 41.

Voucher No. 194 is for the sum of $774.01, is drawn to the order of F. W. Little, vice pres't and charged as follows:—To acct. No. 3 $10.64 To acct. No. 10 $4.90; to acct. No. 11 $33.07; to acct. No. 41 $725.40.

Voucher No. 195 is for the sum of $966.38, is drawn to the order of F. W. Little, vice pres't and is charged as follows:—To acct. No. 3 $151.94; to acct. No. 9 $1.40; to acct. No. 10 .30c; to acct. No. 38 $15; to acct. No. 41 $791.74.

Voucher No. 196 is for the sum of $190.70, is drawn to the order of F. W. Little, vice pres't and is charged as follows:—To acct. No. 3 $2.80; to acct. No. 10 $1.44; to acct. No. 11 $5; to acct. No. 41 $181.46.

Voucher No. 197 is for the sum of $410.20, is drawn to the order of F. W. Little, vice pres't and is charged as follows: To acct.
92 No. 3 $8.81; to acct. No. 10 $10.85; to acct No. 11 .35c; to acct. No. 41 $390.19.

Voucher No. 198 is for the sum of $1865.27, is drawn to the order of F. W. Little, vice pres't and is charged as follows:—To acct. No. 3 $33.93; to acct. No. 9 $10.14; to acct. No. 10 $12.85; to acct. No. 11 $115; to acct. No. 32 $1500; to acct. No. 41 $193.35.

Voucher No. 199 is for the sum of $1509.13, is drawn in favor of F. W. Little, vice pres't and is charged as follows:—To acct. No. 3 $56.08; to acct. No. 10 .51c.; to acct. No. 41 $1421.39; to Louis Roofing Company $27; to H. B. S. $1.75.

Voucher No. 200 is for the sum of $362.53, is payable to F. W. Little and charged as follows:—To acct. No. 3 $1; to acct. No. 9 $10; to acct. No. 41 $324.53; to the Ludeiwiche Tile Co., $27.

Voucher No. 201 is for the sum of $70.62, drawn in favor of F. W. Little, vice pres't and is charged as follows:—To acct. No. 3 $26.77; to acct. No. 10 $2.70; to acct. No. 11 $40; to acct. No. 41 $1.15.

Voucher No. 202 is for the sum of $6.88, drawn in favor of F. W. Little, vice pres't, and is charged as follows:—To acct. No. 3 $4.51; to acct. No. 6 $1.47; to acct. No. 10 $ .90c.

Voucher No. 203 is for the sum of $5000, drawn in favor of Stacy Manfg. Co., and is charged to that firm.

Voucher No. 204 is for the sum of $5000, drawn in favor of Western Gas Construction Company and is charged to that company.

Voucher No. 205 is for the sum of $332.40, drawn in favor of the Acme Cultivator Company and is charged to acct. No. 41.

Voucher No. 206 is for the sum of $224, drawn in favor of the Bristol Company and is charged to acct. No. 41.

Voucher No. 207 is for the sum of $1791.16, payable to the order of Crane Company and charged to acct. No. 41.

Voucher No. 208 is for the sum of $115.53, payable to the order of the Central Electric Company and is charged to acct. No. 41.

93 Voucher No. 209 is for the sum of $6.90, drawn in favor of Cleveland Twist Drill Company and is charged to acct. No 41.

Voucher No. 210 is for the sum of $11.86, drawn in favor of Dolese & Shepard Company and is charged to acct. No. 41.

Voucher No. 211 is for the sum of $1423.73, drawn in favor of the Electric Appliance Company and is charged to acct. No. 41.

Voucher No. 212 is for the sum of $1.35, drawn in favor of the Eclipse Gas Stove Company and is charged to acct. No. 41.

Voucher No. 213 is for the sum of $50, drawn in favor of Hatch & Ritsher, and is charged to legal services.

Voucher No. 214 is for the sum of $241.04, drawn in favor of the Illinois Electric Company and is charged to acct. No. 41.

Voucher No. 215 is for the sum of $95, drawn in favor of Library Bureau and is charged to acct. No. 10.

Voucher No. 216 is for the sum of $211.80, drawn in favor of Lindsley Bros. Company and is charged to acct. No. 41.

Voucher No. 218 is for the sum of $1493.66, drawn in favor of the Ludewiche Roofing Tile Co., and is charged to acct. No. 41.

Voucher No. 219 is for the sum of $20, drawn in favor of the Manhattan General Construction Company and charged to acct. No. 41.

Voucher No. 220 is for the sum of $96, drawn in favor of Parker-Russell Mining & Manfg Co., and is charged to acct. No. 41.

Voucher No. 221 is for the sum of $360, drawn in favor of the Sawyer-Man Electric Company and is charged to acct. No. 41.

Voucher No. 222 is for the sum of $2314.15, drawn in favor of the United States Cast Iron Pipe & Foundry Company and is charged to acct. No. 41.

Voucher No. 223 is for the sum of $22.50, drawn in favor of the Western Electric Company and is charged to acct. No. 41.

Voucher No. 224 is for the sum of $943.84, drawn in favor of the Westinghouse Electric Manfg. Co., and is charged to acct.

94 No. 41.

The following vouchers No. 225 to No. 273 inclusive were registered in the month of December 1899 and were paid in December 1899, or January 1900.

Voucher No. 225 is for the sum of $1534.78, drawn in favor of John A. Roeblings Sons Company and is charged to acct. No. 41.

Voucher No. 226 is for the sum of $20.95, drawn in favor of the Equitable Trust Company and is charged to acct. No. 3.

Voucher No. 227 is for the sum of $75, drawn in favor of C. D. Organ and is charged to acct. No. 1.

Voucher No. 228 is for the sum of $300, drawn in favor of F. W. Little and is charged to acct. No. 1.

Voucher No. 229 is for the sum of $40, drawn in favor of Westinghouse Electric Manfg. Co., and is charged to acct. No. 41.

Voucher No. 229½ is for the sum of $1076.34, drawn in favor of the Chicago national bank and was charged to interest.

Voucher No. 230 is for the sum of $77.62, drawn in favor of F. W. Little, vice pres't, and is charged—$63.40 to Parker-Russell Mining & Manfg. Co., and $14.22 to acct. No. 41.

Voucher No. 231 is for the sum of $675.68, drawn in favor of F. W. Little, vice pres't and is charged as follows:—To acct. No. 3 .30c.; to acct. No. 10 $5; to acct. No. 41 $670.38.

Voucher No. 232 is for $146.39, in favor of F. W. Little, vice pres't and is charged as follows:—To acct. No. 3 $2.05; to acct. No 41 $144.34.

Voucher No. 233 is for $396.37, in favor of F. W. Little, vice pres't and is charged—to acct. No. 11 $80; to acct. No. 41 $316.37.

Voucher No. 234 is for $24.28, in favor of F. W. Little, vice pres't and is charged as follows:—To acct. No. 3 $2.48; to acct. No. 41 $1.80; to legal services $6; to Maryland Meter & Manfg. Co., $15.

Voucher No. 235 is for $1591 10, in favor of F. W. Little, vice pres't and is charged as follows:—To acct. No. 3 $1; to acct.
95 No. 10 .31c.; to acct. No. 41 $1537.58; to Michigan ammonia works $18.81; to M. Dering $33; to acct. No. 103 $40c.

Voucher No. 236 is for the sum of $215.08 in favor of F. W. Little vice pres't and is charged as follows:—To Bushnell & Marriette Pressed Brick Co., $127.26; to John A. Roebling Sons Co., $8.42; to the Maryland Meter Manfg. Co., $79.40.

Voucher No. 237 is for the sum of $1344.40, in favor of F. W. Little vice pres't and is charged as follows:—To acct. No. 3 $11.64; to acct. No. 10 $5.10; to acct. No. 11 $63; to acct. No. 41 $1236.66; to acct. No. 107 $28.

Voucher No. 238 is for $3901.74, in favor of F. W. Little, vice pres't and is charged as follows:—To acct. No. 3 $42 55; to acct. No. 6 $75.38; to acct. No. 10 $6.40; to acct. No. 41 $3609.06; to legal expenses $168.35.

Voucher No. 239 is for $285.03, in favor of F. W. Little, vice pres't and is charged to acct. No. 41.

Voucher No. 240 is for $426.72, in favor of F. W. Little, vice pres't and is charged as follows:—To acct. No. 41 $400.84; to M. Dering $24; to the Maryland Meter & Manfg. Co., $1.88.

Voucher No. 241 is for $157.82, in favor of F. W. Little, vice pres't and is charged to the Bushnell & Mariette Pressed Brick Co.

Voucher No. 242 is for $3684.35, in favor of F. W. Little, vice pres't and covers the pay roll for the last half of December 1899, and the voucher does not show to what accounts it is charged.

Voucher No. 243 is for $2478.34, in favor of F. W. Little, vice pres't and covers the pay roll for the first half of December 1899, and the voucher does not show to what accounts it is charged.

Voucher No. 244

Voucher No. 245 is for $135.64, in favor of F. W. Little, vice pres't and is charged to acct. No. 41.

96 Voucher No. 246 is for $350.54, in favor of F. W. Little, vice pres't and is charged as follows:—To acct. No. 41 $317.16; to M. Dering $33; to acct. No. 106 .38c.

Voucher No. 247 is for $132.38, in favor of F. W. Little, vice pres't and is charged as follows:—To acct. No. 3 $4.05; to acct. No. 10 $5.78; to acct. No. 11 $2.69; to acct. No. 9 $5; to acct. No. 41 $112.88; to acct. No. 107 $1.72; to acct. No. 126 .26c.

Voucher No. 248 is for $250.14 in favor of F. W. Little, vice pres't and is charged as follows:—To acct. No. 10 .25c.; to acct. No. 41 $235; to acct. No. 106 .32c.; to M. Dering $3; to Frazer & Barrett Company $4.07; to Bushnell & Mariette Pressed Brick Co., $7.50.

Voucher No. 249 is for $383.41, in favor of F. W. Little, and is charged as follows:—To acct. No. 3 $1.50; to acct. No. 41 $381.91.

Voucher No. 250 is for $857.26 in favor of F. W. Little, vice pres't and is charged as follows:—To acct. No. 3 $10.58; to acct. No. 41 $838.68.

Voucher No. 251 is for $64.41 in favor of F. W. Little, vice pres't and is charged to acct. No. 41.

Voucher No. 252 is for $26.68 in favor of F. W. Little and is charged—to acct. No. 41 $2.68; insurance $24.

Voucher No. 253 is for $337.86 in favor of F. W. Little vice pres't and is charged to acct. No. 41.

Voucher No. 254 is for $5000 in favor of the Stacey Manfg. Co., and is charged to that company.

Voucher No. 255 is for $241.24, in favor of the Bushnell & Mariette Pressed Brick Co., and is charged to acct. No. 41.

Voucher No. 256 is for $134.68 in favor of Bushnell & Mariette Pressed Brick Company and charged to acct. No. 41.

Voucher No. 256½, is for $48.75 in favor of the Bristol Co., and charged to acct. No. 41.

Voucher No. 256¾ is for $70.11 in favor of Central Electric Co., and charged to acct. No. 41.

97 Voucher No. 257 is for $129.12 in favor of James B. Clow & Sons and charged to acct. No. 41.

Voucher No. 258 is for $129.87 in favor of Electric Appliance Co., and is charged to acct. No. 41.

Voucher No. 259 is for $81.20 in favor of B. F. Goodrich Company and charged to acct. No. 41.

Voucher No. 260 is for $20 in favor of Perry L. Hobbs and charged to acct. No. 41.

Voucher No. 261 is for $108.95 in favor of the Illinois Electric Company and is charged to acct. No. 41.

Voucher No. 262 is for $380.25 in favor of Lindsley Bros. Company and is charged to acct. No. 41.

Voucher No. 263 is for $66 in favor of Library Bureau and is
harged—to acct. No. 41 $30; to acct. No. 106 $36.
Voucher No. 264 is for $4052.52 in favor of the Maryland Meter
Manfg. Company and is charged to acct. No. 41.
Voucher No. 265 is for $6.50 in favor of Manville Covering Com-
ny and is charged to acct. No. 41.
Voucher No. 266 for $25.48 in favor of Pittsburgh Glass Co., and
charged to acct. No. 41.
Voucher No. 267 is for $202.73, is in favor of Parker-Russell Min-
g & Manfg. Co., and is charged to acct. No. 41.
Voucher No. 268 is for $770.94, is in favor of John A. Roeblings
ons Company and is charged to acct. No. 41.
Voucher No. 269 is for $5.11, is in favor of Sewell-Clapp Manfg
o., and is charged to acct. No. 10.
Voucher No. 270 is for $55, is in favor of Scaffer & Budenberg
nd is charged to acct. No. 41.
Voucher No. 271 is for $32.94, is in favor of Western Tube Com-
pany and is charged to acct. No. 41.
Voucher No. 272 is for $479.66, is in favor of the Westing-
house Electric Manfg. Company and is charged to acct. No. 41.
Voucher No. 273 is for $384.50, is in favor of Western Electric
ompany and is charged to acct. No. 41.
In all cases where the vouchers presented, or any portion of them,
ave been charged to accounts numbered from No. 100 upwards,
ich charges are for the construction of the electric plant of the
eoria Gas & Electric Company and should not be considered as
art of the cost of the gas plant, that is, in figuring it up you should
iminate all accounts numbered No. 100 and upwards.
Voucher No. 51 which was missing on yesterday is a pay roll
oucher and will be found among the payrolls, which I now have
ith me. The first pay roll covers the period from May 1, 1899 to
lay 15, 1899 and amounts to $669.27—Interrupted——
The MASTER: Are not the amounts represented by these pay rolls
eferred to already in evidence in the vouchers presented?
The WITNESS: Not as to the accounts to which it is charged; the
istribution is on the back of the pay roll itself.
This pay roll forms a part of voucher No. 26 and is charged as
llows:—To acct. No. 2 $13.85; to acct. No. 33 $18.28; to acct. No.
3 $554.18; to acct. No. 36 $82.96.
The next pay roll, which is a part of voucher No. 27, covers the
eriod from May 16, 1899, to May 31, 1899. The amount of the pay
ll is $2353.70, and is charged as follows:—To acct. No. 1 $207.53;
acct. No. 3 $55.64; to acct. No. 33 $67.74; to acct. No. 2 $20; to
ct. No. 11 $25; to acct. No. 33 $1567.92; to acct. No. 36 $409.87.
The next pay roll, which forms a part of voucher No. 48, covers
e period from June 1, 1899 to June 15, 1899. The pay roll amounts
$2439.27 and is charged as follows: To acct No. 2 $20; to acct.
o. 33 $2128.21; to acct. No. 34 $1.73; to acct. No. 36 $232; to
ct. No. 41 $57.33.

99 The next pay roll, which forms a part of voucher No. 49, amounts to $2908.29, and covers a period from June 16, 1899, to June 30, 1899, and is charged to the following accounts:—To account No. 1, $266.67; to account No. 2, $115.00; to account No. 4, $9.00; to account No. 33, $2311.00; to account No. 34, $2.01; to account No. 36, $156.21; to account No. 37, $4.40; to account No. 41, $44.00.

The next pay roll which forms a part of voucher No. 61, amounts to $3632.76, and covers the period from July 1, 1899, to July 15, 1899, and is charged as follows:—To account No. 1, $50.00; to account No. 2, $20.00; to account No. 33, $3205.99; to account No. 34, $11.87; to account No. 36, $290.60; to account No. 37, $4.45; to account No. 41, $49.85.

The next pay roll, which forms a part of voucher No. 61, and amounts to $4857.98, and covers the period from July 16, 1899, to July 31, 1899, and is charged as follows:—To account No. 1, $216.67; to account No. 2, $434.52; to account No. 33, $3793.57; to account No. 34, $37.42; to account No. 36, $293.70; to account No. 37, $42.75; to account No. 41, $39.35.

The next pay roll, covering a period from August 1, 1899, to August 15, 1899, forms a part of voucher No. 81, and amounts to $5271.82, and is charged as follows:—To account No. 2, $35.00; to account No. 33, $3581.63; to account No. 34, $1103.60; to account No. 36, $448.87; to account No. 37, $2.25; to account No. 41, $100.47.

The next pay roll coveres the period from August 16, 1899, to August 31, 1899, amounts to $6958.04, forms part of voucher No. 81 and is charged as follows:—To account No. 1, $266.67; to account No. 2, $522.94; to account No. 32, $292.95; to account No. 33, $4782.46; to account No. 34, $493.90; to account No. 36, $517.80; to account No. 41, $69.82; to Parker-Russell, $11.50.

100 The next pay roll covering the period from September 1st, 1899, to September 15, 1899, forms part of voucher No. 109, amounts to $4526.54, and is charged as follows:—To account No. 2, $22.50; to account No. 32, $167.15; to account No. 33, $3636.66; to account No. 34, $209.14; to account No. 36, $396.54; to account No. 41, $77.55; to Parker-Russell Mining & Manufacturing Co., $17.00.

The next pay roll coveres the period from September 16, 1899, to September 30, 1899, amounts to $5738.27, forms part of voucher No. 110, and is charged as follows:—To account No. 1, $366.67; to account No. 2, $585.50; to account No. 11, $25.00; to account No. 32, $30.38; to account No. 33, $3569.57; to account No. 34, $97.85; to account No. 36, $647.94; to account No. 41, $70.67; to account No. 45, $258.69; to Parker-Russell, $86.00.

The next pay roll covering a period from October 1, 1899, to October 15, 1899, amounts to $4289.14, forms part of voucher No. 137, and is formed as follows:—To account No. 2, $25.00; to account No. 11, $25.00; to account No. 32, $28.55; to account No. 33,

$2543.82; to account No. 34, $67.92; to account No. 36, $989.57; to account No. 41, $121.52; to account No. 104, $393.55; to account No. 113, $24.38; to Parker-Russell, $69.83.

The next pay roll, covering the period from October 16, 1899, to October 31, 1899, amounts to $5558.06, forms part of voucher No. 51, and is charged as follows:—To account No. 1, $366.67; to account No. 2, $653.00; to account No. 32, $252.87; to account No. 33, $2324.17; to account No. 34, $69.00; to account No. 36, $1130.69; to account No. 41, $315.09; to account No. 104, $401.12; to Parker-Russell, $47.45.

The next pay roll, covers the period from November 1 to November 15, 1899, amounts to $5553.87, forms part of voucher No. 183, and is charged as follows:—To account No. 2, $25.00; to account No. 32, $687.62; to account No. 33, $2522.83; to account No. 34, $107.05; to account No. 36, $1321.69; to account No. 41, $210.91; to account No. 102, $6.; to account No. 103, $39.70; to account No. 104, $509.97; to Parker-Russell $123.10.

The next pay roll, covering the period from November 15th to November 30th, 1899, amounts to $5484.96, forms part of voucher No. 191, and is charged as follows:—To account No. 1, $366.67; to account No. 2, $811.40; to account No. 32, $248.47; to account No. 33, $973.98; to account No. 34, $123.70; to account No. 36, $2134.76; to account No. 41, $235.26; to account No. 102, $21.04; to account No. 103, $35.36; to account No. 104, $497.72; to Parker-Russell, $30.70; to the Western Gas Construction Co. $5.85.

The next pay roll, covering the period from December 1st to December 15th, 1899, forms part of voucher No. 243, amounts to $3478.84, and is charged as follows:—To account No. 2, $33.70; to account No. 32, $184.95; to account No. 33, $305.83; to account No. 34, $515.30; to account No. 35, $9.30; to account No. 36, $775.40; to account No. 40, $11.45; to account No. 41, $91.85; to account No. 104, $17.78; to account No. 125, $11.66; to account No. 131, $14.25; to account No. 132, $1.80; to account No. 133, $421.24; to account No. 134, $3.68; to Parker-Russell, $80.15.

The next pay roll, covering the period from December 16th to December 31st, 1899, amounting to $3684.35, forms a part of voucher No. 242, and is charged as follows:—To account No. 1, $266.67; to account No. 2, $678.00; to account No. 32, $113.50; to account No. 33, $337.48; to account No. 34, $1126.92; to account No. 35, $32.00; to account No. 36, $270.44; to account No. 41, $36.60; to account No. 101, $200.60; to account No. 103, $2.25; to account No. 108, $150.00; to account No. 124, $26.90; to account No. 131, $70.00; to account No. 132, $2.95; to account No. 133, $303.68; to account No. 134, $.68; to account No. 137, $5.18; to Parker-Russell, Mining and Manufacturing Co., $59.50;

In every instance where the account is No. 100 and upwards the charges are for construction, operation or maintenance of the electric department of the business of the Peoria Gas and

Electric Company and such charges do not relate to the gas department of said company.

I have with me the original entries showing the various accounts, to which the material issued from the store room during the months from May to December, 1899 inclusive, were charged.

The first is "journal entry No. 2" for materials issued in the month of May, 1899, charging account No. 33 with $6942.68; account No. 36, with $377.77; account No. 37 with $745.16; account No. 40 with $2.64; account No. 41 with $16.10 and the store room account No. 41 is credited accordingly.

(Mr. MANSFIELD:)

Q. Are the items shown upon that statement?

A. The duplicates of these are a lot of things like this, requisitions on the store room for material, etc.; accompanying each one of these was probably 400 tickets making up the amount and if you want the tickets it is easy enough to get them; you can have access to all the details if you desire.

The next is "journal entry No. 6" for materials issued for the month of June, 1899, charging account No. 33 with $11957.91; account No. 34 with $10.00; account No. 36 with $283.29; account No. 37 with $501.57; account No. 38 with $183.38; account No. 41 with $101.68; and the store room account No. 41 receives a corresponding credit.

The next is "journal entry No. 7" for material issued in the month of July, 1899, charging account No. 33 with $1783.17; account No. 34 with $361.66; account No. 36 with $572.64; account No. 37 with $657.16; account No. 38 with $189.00; account No. 41 with $14.25; and the store room account No. 41 receives a corresponding credit.

The next is "journal entry 10" for material issued during the month of August, 1899, charging account No. 32 with
103 $17.85; account No. 33 with $13017.79; account No. 34 with $400.90; account No. 36 with $1689.64; account No. 37 with $504.06; account No. 38 with $71.94; account No. 41 with $4.54; and the store room account No. 41 receives a corresponding credit.

The next is "journal entry No. 14" for materials issued in the month of September, 1899, charging account No. 32 with $550.70; account No. 33 with $12961.89; account No. 34 with $1178.46; account No. 36 with $1771.90; account No. 37 with $177.83; account No. 40 with $11.54; account No. 41 with $15.19; Parker-Russell Mining & Manufacturing Co. $61.22; store room account No. 41 receiving corresponding credit,

The next is "journal entry No. 17," covering material issued in October 1899, charging account No. 32 with $644.95; account No. 33 with $7145.67; account No. 34 with $53.89; account No. 36 with $2643.09; account No. 37 with $51.21; account No. 41 with $12.16. The store room account No. 41 receiving corresponding credits.

The next is "journal entry " 22," for material issued in November 1899, charging account No. 32 with $2077.08; account No. 33 with $6089.80; account No. 34 with $82.20; account No. 36 with $3993.20; account No. 38 with $8.97; account No. 41 with $94.00. The store room receiving a corresponding credit.

The next is "journal entry " 26," covering materials issued from store room in the month of December 1899, charging account No. 3 with $34.10; account No. 10 with $15.00; account No. 11 with $33.00; account No. 22 with $734.05; account No. 32 with $6371.30; account No. 33 with $3605.84; account No. 34 with $6718.03; account No. 35 with $5.98; account No. 36 with $1257.20; account No. 37 with $453.48; account No. 38 with $161.95; account No. 40 with $413.07; account No. 41 with $57.99; Parker-Russel Mining and Manufacturing Co. $3297.70; Stacey Manufacturing Co. $2166.88; Western Gas Construction Co. $692.95. The store room receiving corresponding credits.

104 Questions by the MASTER:

Q. These entries are with reference to requisitions made on the store room account, are they not?

Ans. Yes sir.

Q. Is not the amount of these requisitions represented in the store room account as already testified to by you. In other words, how did you get these things into the store room?

A. Bought them, paid for them and charged them to the store room.

Q. Has the amount of that expenditure been already testified to by you and did those amounts go to make up the store room account against which these requisitions just testified to by you were made?

Ans. Yes sir.

Q. And went into the gas plant?

Ans. Yes sir.

Q. Are these amounts just given by you expenditures in addition to the amounts testified to by you on yesterday and this morning, or are they merely withdrawals from that stock on hand in the store room?

A. They are withdrawals from the stock on hand, the purchase of which was testified to yesterday.

(Witness resuming the reading of vouchers) The following original vouchers No. 274, to No. 315 inclusive, were registered in the month of January, 1900, and were paid in January or February, 1900.

Voucher No. 274 for the sum of $553.53, in favor of Fraser & Barrett Company and was charged to account No. 41.

Voucher No. 275 is for $5.25, in favor of the Equitable Trust Company and charged—to account No. 10, $5.00; to account No. 3, $.25.

Voucher No. 276 is for $300.00 in favor of F. W. Little and charged to account No. 1.

Voucher No. 277 is for $75.00 in favor of C. D. Organ and charged to account No. 1.

Voucher No. 278 is for $1076.39 in favor of the Chicago
105 national bank and charged to interest account or account No. 7.

Voucher No. 279 is for $3406.12, covering the pay roll for the second half of January 1900. The voucher does not show to what accounts it was charged.

Voucher No. 280, amounting $2458.71 covers the pay roll for the first half of January 1900. The voucher does not show to what accounts it was charged.

Voucher No. 281 is for $2403.77 in favor of F. W. Little, vice president, and charged as follows:—To account No. 3, $.25; to account No. 10, $.15; to account No. 41 $2391.08; to account No. 103, $5.14; to account No. 106, $7.15.

Voucher No. 282 is for $177.17, drawn in favor of F. W. Little vice president and charged as follows:—To account No. 3, $5.63; to account No. 9, $5.50; to account No. 11, $18.35; to account No. 41, $123.69; to account No. 106, $9.00; to account No. 107, $15.00.

Voucher No. 283 is for $292.15, drawn in favor of F. W. Little, vice president, and charged to account No. 41.

Voucher No. 284 is for $70.86, in favor of F. W. Little, vice president, and charged as follows:—To account No. 3, $.75; to account No. 10, $3.55; to account No. 11, $7.00; to account No. 41, $51.46; to account No. 103, $1.00; to account No. 106, $3.85; to account No. 107, $3.25.

Voucher No. 286 is for $658.62, drawn in favor of F. W. Little, vice president and charged as follows:—To account No. 2, $21.00; to account No. 3, $3.18; to account No. 6, $91.81; to account No. 9, $405.64; to account No. 10, $5.70; to account No. 105, $10.50.

Voucher No. 285 is for $537.83, drawn in favor of F. W. Little, vice president, and charged as follows:—To account No. 3, $21.75; to account No. 9, $150.00; to account No. 10, $5.00; to account No. 41, $475.47; to account No. 106, $.40.

106 Voucher No. 288 is for $54.72, drawn in favor of F. W. Little, vice president, and charged to account No. 41.

Voucher No. 287 is for $247.46, drawn in favor F. W. Little, vice president, and charge as follows:—To account No. 3, $6.50; to account No. 8, $2.00; to account No. 10, $5.80; to account No. 11, $5.00; to account No. 41, $20.25; to account No. 105, $6.50; to account No. 106, $1.40; to account No. 41, $200.00.

Voucher No. 289 is for $2021.19, drawn in favor of F. W. Little, vice president, and charged to account No. 41.

Voucher No. 290 is for $436.65, drawn in favor of F. W. Little, vice president, and charged as follows:—To account No. 41, $435.06; to account No. 10, $1.60.

Voucher No. 291 is for $431.74, in favor of F. W. Little, vice president, and charged to account No. 41.

Voucher No. 292 is for $191.46 in favor of F. W. Little, vice presi-

dent, and charged as follows:—To account No. 3, $.26; to account No. 11, $37.00; to account No. 6, $6.50; to account No. 41, $147.44; to account No. 103, $.26.

Voucher No. 293 is for $260.24 in favor of F. W. Little, vice president, and charged as follows:—To account No. 3, $3.31; to account No. 10, $2.41; to account No. 43, $248.18; to account No. 103, $.98; to account No. 106, $5.36.

Voucher No. 294 is for $2514.11, in favor of F. W. Little, vice president, and charged as follows:—To account No. 3, $25.00; to account No. 10, $.80; to account No. 41, $2484 91; to account No. 103, $.40; to account No. 106, $3.00.

Voucher No. 295 is for $.50 in favor of the Amberg File & Index Company and charged to account No. 10.

Voucher No. 296 is for $21.50, in favor of James B. Clow & Sons, and charged to account No. 41.

107 Voucher No. 297 is for $45.93 in favor of Central Electric Company and charged to account No. 41.

Voucher No. 298 is for $9.68, in favor of Electric Appliance Co., and charged to account No. 41.

Voucher No. 299 is for $12.00 in favor of the Hohmann & Maurer Manufacturing Co. and charged to account No. 41.

Voucher No. 300 is for $52.50, in favor of the Harden Hand Grenade Co. and is charged to account No. 41.

Voucher No. 301 is for $14 60, in favor of Illinois Electric Co. and charged to account No. 41.

Voucher No. 302 is for $17.74 in favor of Ludewichi Roofing Tile Co. and is charged to account No. 41.

Voucher No. 303 is for $4.75 in favor of Library Bureau and charged as follows:—To account No. 41 $80.00; to account No. 10, $3.75; to account No. 106, $11 00.

Voucher No. 304 is for $123.54 in favor of Merriman Meter Manufacturing Co. and is charged to account No. 41.

Voucher No. 305 is for $6.50, in favor of Manville Covering Co. and charged to account No. 41.

Voucher No. 307 is for $123.20 in favor of Parker-Russell Mining & Manufacturing Co. and charged to account No. 41.

Voucher No. 308 is for $10.20, in favor of the Pittsburg Glass Co. and charged to account No. 41.

Voucher No. 309 is for $25.50, in favor of P. F. Pettibone & Co. and charged to account No. 106.

Voucher No. 310 is for $299.48, in favor of John A. Roeblings Sons Co. and charged to account No. 41.

Voucher No. 311 is for $17.50 in favor of the Ryan & Hart Co. and charged to account No. 10.

Voucher No. 312 is for $263.69, in favor of Snider, Hughes
108 Co. and charged to account No. 41.

Voucher No. 313 is for $62.06, in favor of the Warren Electric Specialty Co. and is charged to account No. 41.

Voucher No. 314 is for $5.50 in favor of the Western Electric Co. and charged to account No. 41.

Voucher No. 315 is for $19.60, in favor of Westinghouse Electric & Manufacturing Co. and charged to account No. 41.

The following original vouchers No. 316 to 360 inclusive were registered in February 1900 and paid in February or March 1900

Voucher No. 316 is for $1521.85, in favor of L. E. Myers and charged to account No. 41.

Voucher No. 317 is for $972.22, in favor of the Chicago national bank and charged to interest or account No. 7.

Voucher No. 318 is for $75.00, in favor of C. D. Organ and charged to account No. 1.

Voucher No. 319 is for $300.00, in favor of F. W. Little and charged to account No. 1.

Voucher No. 320 is for $2.05 in favor of the Equitable Trust Co. and charged to account No. 3.

Voucher No. 321 is for $1500.00, in favor of the Daniels Coal & Coke Co. and charged to account No. 41.

Voucher No. 321½ is for $1000.00, payable to D. R. Russell and charged to D. R. Russell.

Voucher No. 322 is for $330.02 in favor of F. W. Little, vice president, and is charged as follows:—To account No. 3, $3.00; to account No. 10, $19.25; to account No. 41, $307.77.

Voucher No. 323 is for $492.63, in favor of F. W. Little, vice president, and charged to account No. 41.

Voucher No. 324 is for $71.56, in favor of F. W. Little, vice president, and charged—to account No. 3, $1.50; to account No. 41, $70.06.

109 Voucher No. 325 is for $79.65, in favor of F. W. Little, vice president, and charged as follows:—To account No. 3, $.65; to account No. 10, $8.40; to account No. 11, $15.45; to account No. 41, $34.65; the remainder of the voucher is charged to electric account.

Voucher No. 326 is for $2387.48, covering the pay roll for the first half of February. The voucher does not show to what account it was charged.

Voucher No. 327 is for $3942.95, covering the pay roll for the second half of February, 1900. The voucher does not show to what account it was charged.

Voucher No. 328 is for $150.46, in favor of F. W. Little, vice president, and is charged—to account No. 3, $1.75; to account No. 41, $148.89.

Voucher No. 329 is for $689.51, in favor of F. W. Little, vice president, and is charged as follows:—To account No. 3, $.50; to account No. 6, $150.00; to account No. 10, $.40; to account No. 41, $532.70; to the Western Gas Construction Co. $.50. The remainder of the voucher was charged to electric account.

Voucher No. 330 is for $632.67, in favor of F. W. Little, vice president, and is charged as follows:—To account No. 3, $3.03; to

account No. 5, $100.00; to account No. 9, $3.00; to account No. 11, $56.00; to account No. 41, 440.94; to D. R. Russell, $1.32; remainder of voucher charged to electric account.

Voucher No. 331 is for $777.63, in favor of F. W. Little, vice president, and is charged as follows:—To account No. 41, $129.85; to Western Gas Construction Co. $264.04; to Stacey Manufacturing Co. $314.95; remainder of voucher charged to electric account.

Voucher No. 332 is for $479.87, payable to F. W. Little, vice president, and charged as follows:—To Western Gas Con-
110 struction Co. $125.00; to Stacey Manufacturing Co. $45.87; to Parker-Russell Mining & Manufacturing Co. $309.00.

Voucher No. 333 is for $721.49, in favor of F. W. Little vice president, and charged as follows:—To Stacey Manufacturing Co. $66.16; to Western Gas Construction Co., $260.75; to Parker-Russell $180.60; to account No. 3, $1.26; to account No. 10, $5.00; to account No. 41, $202.32; remainder of voucher charged to electric account.

Voucher No. 334 is for $606.56 in favor of F. W. Little, vice president, and is charged as follows.—To account No. 3, $98.82; to account No. 11, $203.00; to account No. 32, $100.00; to account No. 41, $201.74.

Voucher No. 335 is for $55.38 in favor of F. W. Little, vice president, and is charged—to Parker-Russell, $10.00; to account No. 41, $45.38.

Voucher No. 337 is for $275.00 in favor of American Meter Co. and is charged to account No. 41.

Voucher No. 338 is for $10.00 in favor of Atlas Manufacturing Co. and is charg*ged* to account No. 41.

Voucher No. 339 is for $14.45, in favor of Baker-Vawter Co. and charged to account No. 41.

Voucher No. 340 is for $234.95 in favor of Central Electric Co. and charged to account No. 41.

Voucher No. 341 is for $27.50 in favor of Geo. M. Clark Co. and charged to account No. 41.

Voucher No. 342 is for $34.95 in favor of James B. Clow & Sons *nad* is charged to account No. 41.

Voucher No. 343 is for $46.30, in favor of Wm. M. Crane Co. and charged to account No. 41.

Voucher No. 344 is for $976.00 in favor of M. Dering and charged to account No. 41.

111 Voucher No. 345 is for $6.00 in favor of the Globe Wernicke Co. and is charged to account No. 41.

Voucher No. 346 is for $167.50 in favor of Hohman & Maurer Manufacturing Co. and charged to account No. 41.

Voucher No. 347 is for $58.55, in favor of Jones Perpetual Ledger Co. and charged to account No. 10.

Voucher No. 348 is for $2673.40 in favor of Maryland Meter & Manufacturing Co. and charged to account No. 41.

Voucher No. 349 is for $8880.35, in favor of the Manhattan General Construction Co. and charged to account No. 41.

Voucher No. 350 is for $62.64, in favor of John R. Roeblings Sons Co. and charged to account No. 41.

Voucher No. 351 is for $5.50, in favor of B. F. Pettibone & Co. and charged to account No. 10.

Voucher No. 352 is for $703.50, in favor of the H. N. Strait Manufacturing Co. and charged to account No. 41.

Voucher No. 353 is for $37.50, in favor of D. M. Stewart Manufacturing Co. and charged to account No. 41.

Voucher No. 354 is for $89.00 in favor of Starks-Edison Co. and charged to account No. 41

Voucher No. 355 is for $75.00 in favor of Snider-Hughes Co. and charged to account No. 41.

Voucher No. 356 is for $64.33 in favor of M. R. Udell & Co. and charged to account No. 41.

Voucher No. 357 is for $150.00 in favor of Western Electric Co. and charged to account No. 41.

Voucher No. 358 is for $2500.00 in favor of the Daniels Coal & Coke Co. and charged to account No. 41.

Voucher No. 358½ is for $1997.08, in favor of Western Tube Co. and charged to account No. 41.

112 Voucher No. 359 is for $450.00 in favor of Western Electric Co. and charged to account No. 41.

Voucher No. 360 is for $636.02, in favor of Daniels Coal & Coke Co. and charged to account No. 41.

The following original vouchers No. 361 to No. 443 inclusive were registered in March 1900 and paid in March and April 1900.

Voucher No. 361 is for $300.00 in favor — F. W. Little and charged to account No. 1.

Voucher No. 362 is for $1076.38 in favor of the Chicago national bank and is charged to interest.

Voucher No. 363 is for $75.00 in favor of C. D. Organ and charged to account No. 1.

Voucher No. 364 is for $532.04 in favor of F. W. Little, vice president, and is charged as follows:—To account No. 2, $41.67; to account No. 3, $26.84; to account No. 6, $150.00; to account No. 10, $13.95; to account No. 41, $85.27; to the Stacey Manufacturing Co. $85.50; to the Western Gas Construction Co., $125.00; remainder of voucher was charged to electric account.

Voucher No. 365 is for $1260.58, in favor of F. W. Little, vice president, and charged—to account No. 3, $1.75; to account No. 41, $1258.83.

Voucher No. 366 is for $228.18 and was charged as follows:—To account No. 3, $25.67; to account No. 11, $40.00; to account No. 41, $53.76; to the Western Gas Construction Co. $50.75; the remainder of the voucher was charged to electric account.

Voucher No. 367 is for $207.78, in favor of F. W. Little, vice president, and was charged as follows:—To account No. 3, $ .90; to account No. 10, $8.55; to account No. 11, $19.75; to account No. 41,

$134.08; the remainder of the voucher was charged to electric account.

113 Voucher No. 368 is for $352.57, in favor of F. W. Little, and was charged—to account No. 3, $ .10; to account No. 41, $352.41.

Voucher No. 369 is for $1028.26, in favor of F. W. Little, vice president, and is charged to account No. 41.

Voucher No. 370 is for $3136.30, covering the pay roll for the first half of March 1900 and the voucher does not show to what accounts it was charged.

Voucher No. 371 is for $2566.46 in favor of F. W. Little, vice president, and is charged as follows:—To account No. 3, $2.85; to account No. 41, $2551.11; remainder of voucher was charged to electric accounts.

Voucher No. 372 is for $299.36 in favor of F. W. Little, vice president, and is charged as follows:—To account No. 3, $1.01; to account No. 10 $ .40 to account No. 41, $245.10; to Parker-Russell $1.50; remainder of voucher was charged to electric account.

Voucher No. 373 is for $54.34 in favor of F. W. Little, vice president, and was charged as follows:—To account No. 41, $18.12; to Stacey Manufacturing Co., $31.46; remainder of voucher charged to electric account.

Voucher No. 3174 is for $145.70 in favor of Daniels Coal & Coke Co. and is charged to account No. 41.

Voucher No. 374½ is for $346.48 in favor of the Equitable Trust Co. was charged—to account No. 3, $15.05; to interest account $331.43.

Voucher No. 375 is for $199.95, in favor of the United States Cast Iron Pipe & Foundry Co. was charged to account No. 41.

Voucher No. 376 is for $3830.64 in favor of F. W. Little, vice president, and covers the pay roll for the second half of March, 1900, and the voucher does not show to what accounts it was charged.

Voucher No. 377 is for $501.97, in favor of F. W. Little,
114 vice president, and was charged to account No. 41.

Voucher No. 378 is a discount account and does not belong in the record.

Voucher No. 379 is for $112.44, is in favor of F. W. Little vice president, and is charged as follows:—To account No. 3, $5.36; to account No. 11, $14.00; to account No. 41, $41.39; to Western Gas Construction Co., $51.29; remainder of voucher is charged to electric accounts.

Voucher No. 380 is for $22.50, in favor of American Meter Co. and charged to account No. 41.

Voucher No. 381 is for $26.64 in favor of James B. Clow & Sons and charged to account No. 41.

Voucher No. 382 is for $38.40 in favor of Wm. M. Crane Co. and charged to account No. 41.

Voucher No. 383 is for $96.80 in favor of the Central Electric Co. and charged to account No. 41.

Voucher No. 384 is for $4382.62 in favor of Daniels Coal & Coke Co. and is charged to account No. 41.

Voucher No. 385 is for $206.21 in favor of M. Dering and charged to account No. 41.

Voucher No. 386 is for $564.15 in favor of Electric Applicane Co. and charged to account No. 41.

Voucher No. 387 is for $64.90 in favor of the Eclipse Gas Stove Co. and charged to account No. 41.

Voucher No. 388 is for $68.20 in favor of W. S. Edwards Manufacturing Co. and charged to account No. 41.

Voucher No. 389 is for $1980.47 in favor of J. L. Flinn and charged to account No. 41.

Voucher No. 390 is for $78.00 in favor of the Goheen Manufacturing Co. and charged to account No. 41.

115 Voucher No. 391 is for $2.49 in favor of the Illinois Electric Co. and charged to account No. 41.

Voucher No. 392 is for $21.04 in favor of F. & L. Kahn & Bros. and charged to account No. 41.

Voucher No. 393 is for $13.00 in favor of the Keystone Manufacturing Co. and charged to account No. 41.

Voucher No. 394 relates entirely to electric accounts.

Voucher No. 395 is for $358.18 in favor of Maryland Meter Manufacturing Co. and charged to account No. 41.

Voucher No. 396 is for $52.97 in favor of the Manhattan General Construction Co. and charged to account No. 41.

Voucher No. 397 is for $11.53 in favor of the Pittsburg Glass Co. and charged to account No. 41.

Voucher No. 398 is for $202.82 in favor of John A. Roeblings Sons Co. and charged to account No. 41.

Voucher No. 399 is for $13.50 in favor of the Ryan & Hart Co. and charged to account No. 10.

Voucher No. 400 is for $1691.35 in favor of Schneider & Trenkamp Co. and charged to account No. 41.

Voucher No. 401 is for $206.73 in favor of the Standard Lighting Co. and charged to account No. 41.

Voucher No. 402 is for $17.55 in favor of the Siemens & Holske Electric Co. and charged to account No. 41.

Voucher No. 403 is for $575.54 in favor of the Standard Oil Co. and charged to account No. 41.

Voucher No. 404 is for $393.26 in favor of Western Electric Co. and charged to account No. 41.

Voucher No. 405 is for $341.42 in favor of Clark Coal & Coke Co. and charged to account No. 41.

Voucher No 406 is for $13.58 in favor of Colvurn, Birks & Co. and charged to account No 41.

116 Voucher No. 407 is for $12.98 in favor of Cummings & Emerson and was charged to acct. No. 41.

Voucher No. 408 is for $48.03 in favor of Couch & Heyle and charged to acct. No. 41.

Voucher No. 409 is for $7.89 in favor of Distler Bros., Manfg. Co., and charged to acct. No. 41.

Voucher No. 410 is for $179.44 in favor of Dolan & Maher and charged to acct. No. 41.

Voucher No. 411 is for $9 in favor of P. A. Flannagan and charged to acct. No. 41.

Voucher No. 412 is for $69 in favor of H. W. Hovenden and charged to acct. No. 11.

Voucher No. 413 is for $311.79 in favor of H. W. Lynch and charged to acct. No. 41.

Voucher No. 414 is for $42.10 in favor of Central Union Telephone Co., and charged to acct. No. 41.

Voucher No. 415 is for $240.23 in favor of J. M. Kimsey Lumber Co., and charged to acct. No. 41.

Voucher No. 416 is for $328.45 in favor of N. J. Louis & Co., and charged to acct. No. 41.

Voucher No. 417 is for $165.49 in favor of A. Lucas & Sons and charged to acct. No. 41.

Voucher No. 418 is for $17.39 in favor of the Nixon Printing Co., and charged to acct. No. 10.

Voucher No. 419 is for $7.50 in favor of the Peoria Fuel Co., and charged to acct. No. 3.

Voucher No. 420 is for $7.06 in favor of the Peoria Voiks Freund Co., and charged to acct. No. 4.

Voucher No. 421 is for $52.78 in favor of the Peoria Herald Pub. Co., and charged as follows:—To acct. No. 11 $28; to acct. No. 4 $10.78; remainder of the voucher charged to electric accounts.

117 Voucher No. 422 is for $28.25 in favor of Peoria Foundry Company and charged to acct. No. 41.

Voucher No. 423 is for $271.47 in favor of Peoria Gas Light & Coke Co., and charged to acct. No. 41.

Voucher No. 424 is for $2.45 in favor of Peoria Electric Supply Co., and charged to acct. No. 41.

Voucher No. 425 is for $5.10 in favor of J. D. Peck and charged to acct. No. 41.

Voucher No. 426 is for $5.24 in favor of Post Printing Company and charged to acct. No. 10.

Voucher No. 427 is for $28.43 in favor of Rodney, Mitchell & Co., and charged to acct. No. 10.

Voucher No. 428 is for $4 in favor of H. A. Robinson Fuel Co., and charged to acct. No. 3.

Voucher No. 429 is for $7.35 in favor of Thede Bros. and charged to acct. No. 41.

Voucher No. 430 is for $21.85 in favor of H. Sandmeyer & Co., and charged to acct. No. 41.

Voucher No. 431 is for $5.88 in favor of Samuel Seyler & Son and charged to acct. No. 41.

Voucher No. 432 is for $51.01 in favor of John C. Streibich and charged to acct. No. 41. $45.96; to acct. No. 10 $3.25; to acct. No. 3 80c.

Voucher No. 433 is for $3.60 in favor of the Trade & Labor Gazette and charged to acct. No. 4.

Voucher No. 434 is for $35 in favor of P. J. Wall and charged to acct. No. 41.

Voucher No. 435 is for $12 in favor of J. C. Wolfle and charged to acct. No. 3.

Voucher No. 436 is for $5.24 in favor of Western Union Telegraph Co., and charged to acct. No. 3.

118 Voucher No. 437 is for $4.80 in favor of L. Ph. Wolfe and charged to acct. No. 4.

Voucher No. 438 is for $10.57 in favor of Wilson Grocery Co. and charged to acct. No. 41.

Voucher No. 439 is for $2.55 in favor of C. Whittemore & Sons and charged to acct. No. 41.

Voucher No. 440 is for $137.08 in favor of F. W. Little, vice pres't and is charged as follows:—To acct. No. 10 $10.97; to acct. No. 41 $122.74; remainder of voucher charged to electric accounts.

Voucher No. 441 is for $1050.41 in favor of F. W. Little vice pres't and is chargedas follows:—To acct. No. 3 .52c.; to acct. No. 4 $15; to acct. No. 10 $7.23; to acct. No. 11 .35c.; to acct. No. 41 $69.63; to Western Gas Construction Company $75.80. Remainder of voucher charged to electric accounts.

Voucher No. 442 is for $215.11 in favor of F. W. Little vice pres't and is charged to acct. No. 41.

Voucher No. 443 is for $392.24 in favor of F. W. Little vice pres't and charged to acct. No. 41.

The MASTER: Don't you think Mr. Mansfield, that you can agree that the balance of the expenses of complainants' plant can be proved by the ledger balances and books of the company, you being allowed to inspect any voucher containing any item appearing on the books which you desire to question. I do not mean that you shall accept the statements offered in evidence as true and correct, but prove the balance of the accounts by the ledger balances and any item appearing on the books you desire to question, the voucher containing such item or items shall be submitted to you at such time as you desire for your inspection.

I think the present method of introducing the vouchers in evidence, if pursued, is a useless incumbrance of the record.

119 The witness, Mr. Little, has stated to me that there are in the neighb-ood of 2000 vouchers of the character of those already introduced in evidence. I would like to have counsel agree on this matter if they can possibly do so.

Mr. IRWIN: I think so far as counsel for complainant are concerned we have made every reasonable proposition that can be expected of us. There are only two ways of putting in proof properly,

one is by stipulation, and the other is to make the proof in legal form. We have tried to stipulate and failed and are now proceeding in the legal way. I am satisfied in my own mind that when we get through with these vouchers on the course we are now pursuing Mr. Mansfield will not be any wiser than he would be if he had accepted the proposition we made, but he don't see fit to accept it and I don't see how either the special master, or counsel can force him to do so.

Mr. MANSFIELD: I do not think I ought to admit that the balance as shown by the ledger, or ledger accounts are true and correct without having inspected the ledger, or the accounts that go to make up the ledger accounts and it would — impossible for me with my knowledge of the books to do it at this time. I do not know whether the ledger will show what has been charged to operating expenses and construction account etc., separately or not, and for that reason, if no other, the balances, as shown by the ledger accounts, would not be the evidence upon which any judgment in this case could be based.

The SPECIAL MASTER: Will you tell me, Mr. Mansfield, what there is in these vouchers indicating what the different amounts are expended for, whether for operating expenses or not?

Mr. MANSFIELD: The voucher itself don't show it, but the subvouchers contain every item of expense they have been to.

Mr. IRWIN: *Is it* now nearly adjourning time, and if the master will adjourn the hearing at this point until to-morrow morn-
120 ing Mr. Ritsher and myself will draw up a stipulation this evening which will perhaps be acceptable to counsel for defendant and will greatly shorten the examination.

Adjourned by agreement until Saturday, November 9/ 1901 at 10 a. m.

Directors' room, Chicago National Bank building.

CHICAGO, ILL., SATURDAY, *November* 9, 1901—10 a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin and Mr. E. C. Ritsher appearing for complainant. Mr. Henry Mansfield appearing for defendant.

Mr. IRWIN: Counsel for complainant have drawn up a stipulation, which I now submit to counsel for defendant, for his approval. The stipulation, if agreed to, will do away with the introduction of further vouchers in the case and materially shorten the examination of the witness on the stand and also save considerable expense.

Mr. MANSFIELD (after an examination of the stipulation): I cannot agree to this stipulation in its present form.

After considerable discussion between master and counsel for both complainant and defendant, the further hearing of testimony was adjourned until Wednesday, November 13th, 1901, at 10 o'clock a. m.

121 *In re* PEORIA GAS MATTER.

Parties met pursuant to adjournment at the directors' room of the Equitable Trust Company, Chicago, Illinois, November 13, 1901, at 10 o'clock a. m.

Present: Same as before.

Mr. IRWIN: In view of the holding of the special commissioner on Saturday with reference to the introduction of testimony and the remarks of Judge Kohlsaat, when his attention was called to the matter, we now offer to enter into the following stipulation with reference to the introduction of testimony, as to the cost of the gas plant of the complainant and the operation thereof. This is the same one that was presented to you Saturday (handing document to Mr. Mansfield). I ask that the stipulation be made part of the record as offered.

Mr. MANSFIELD: I object to it as immaterial, and for the further reasons that it will merely encumber the record, and has no relation to the suit in any manner.

By the MASTER: The stipulation may be admitted and made a part of the record and proceedings in this case. Do you desire to have it marked as an exhibit, Mr. Irwin?

Mr. IRWIN: No, I offer it as part of the record,—in view of the rulings of the master and the suggestion of the court.

Mr. MANSFIELD: Seems to me it just simply makes an additional cost; no reason why it should be in the record.

Mr. RITSHER: The court says he will tax the costs with reference to whether we agreed or not; and we want the court to know what we offered to do.

122 Mr. MANSFIELD: Then I would like to make a statement there to the effect that if the words "and were proper expenditures" appearing on the fourth line from the bottom of the first page, are struck out of the stipulation, that the city of Peoria will enter into it.

Mr. RITSHER: Let the record show that the complainant will consent to the elimination of the words "and were proper expenditures," from the stipulation offered, provided the following is added to the stipulation, to-wit: "And in the event that the defendant shall attack or question any item or items of expenditure entering into the cost of the construction or operation of the gas plant of complainant, then the complainant shall have the right to introduce all original vouchers, duplicate vouchers and sub-vouchers pertaining to such cost or outlay, to be considered as evidence of its case in chief.

Mr. MANSFIELD: I will agree to that, provided the stipulation is not considered as having any relation to the items set forth in Exhibit No. 3 as contained in the record, otherwise I will not.

Mr. RITSHER: The stipulation speaks for itself and we can not modify it, as suggested by counsel.

Mr. MANSFIELD: I will modify that stipulation,—"provided such stipulation has no reference to items and figures contained in Exhibit 3 preceding account designated as expenses.

Mr. RITSHER: May it please the court, we have determined to introduce our proof in an orderly way, put in all original sub-vouchers.

Mr. IRWIN: I would like to have Mr. Mansfield designate
123 in the record, from the exhibit there, just what items on that exhibit he has objected to as not being actual and proper expenditures in the construction or operation of the plant.

Mr. MANSFIELD: I won't do that, Mr. Irwin.

By the MASTER: Referring to Exhibits 2 to 6, both inclusive

Mr. IRWIN: If you want us to limit the proof on these matters, we have got to know what we are limited to; and if we don't know what your objection is, we have got to go on and make proper proof as to all.

Mr. MANSFIELD: Mr. Mansfield will make the statement requested by the opposing counsel, provided the words "and were proper expenditures" are stricken out of the request.

Mr. IRWIN: I don't see anything else to do than to go on.

Said proposed stipulation is in words and figures following, to-wit:

In order to save the time and expense incident to making formal proof of the cost of the construction and operation of the plant of the Peoria Gas and Electric Company and to avoid the necessity for introducing several thousand vouchers,

It is here stipulated and agreed by and between the respective parties by their respective counsel, that the witness, F. W. Little may testify as to the total amount of expenditures made by the complainant company in and about the construction and operation of the gas plant of said company from the time of the organization of the complainant company to September 1, 1901, as shown by the vouchers and books of the company, stating the totals of the various accounts under which said expenditures are entered;

124 It is further stipulated that in the event that said Little shall testify that said totals are true totals, as shown by the books and vouchers of said company, and represent all the actual expenditures made by said company during said period in and about the construction and operation of the gas plant of said company, and that the vouchers, duplicate vouchers and sub-vouchers, showing all said expenditures in detail, are present in court for inspection and examination by the special commissioner and counsel for the parties, then and in that event no objection shall be made by the defendant to the competency of such evidence, but it shall be and hereby is admitted that such expenditures were in fact made and that the said expenditures are charged to the proper accounts, (and were proper expenditures,) except in so far as any of said expenditures or the distribution thereof in the several accounts may be effectively attacked upon cross examination or otherwise.

It is further stipulated that for the purpose of attacking and verifying such expenditures, or any of them, the said vouchers duplicate vouchers and sub-vouchers throughout the pendency of this suit before said special commissioner, shall be subject to examination by counsel for defendant or by any qualified public accountant in his behalf, at all reasonable times during business hours at the office of the company in Chicago, subject to such regulations as may be imposed from time to time by the court."

By the MASTER: Proceed with the examination.

F. W. LITTLE.

Direct examination continued by Mr. IRWIN:

Q. Mr. Little have you the sub-vouchers with you to original voucher No. 2 read in evidence?

A. Yes, sir.

125 Q. Will you produce them?

A. I have them here (producing vouchers)

Q. Will you produce and read them for the purpose of verifying the purposes for which the expenditure, as named in voucher No. 2.——

Mr. MANSFIELD: I want to object to the reading of the sub-vouchers on the ground of their immateriality, incompetency and not the best evidence, and not being taken from books of original entry, and I want to make a statement here,—that opposing counsel having seen fit to introduce sub-vouchers, objection is hereby made on the part of the city of Peoria to the stipulation hereinbefore entered into by and between counsel, as shown on page "XX" 74 of the record of November 5th, 1901, and request that said stipulation be stricken from the record.

Mr. IRWIN: I want to state before the master's ruling that this offer is now made under the stipulation referred to and is in pursuance of the terms thereof.

By the MASTER: I think I will require you gentlemen to adhere to this stipulation in regard to further proof as to the cost of this plant, as appears in the record of the proceedings of this cause Nov. 5, 1901 on page "74" designated by the reporter as "XX J. M."

Mr. IRWIN: If that is the ruling of the master, we now offer sub-vouchers referred to for verification under the stipulation referred to.

Mr. MANSFIELD: I object on the ground that it does not come within the terms of the stipulation and on the further ground that it is not competent evidence, not being taken from the books of original entry.

By the MASTER: Proceed with the examination of the witness.

By Mr. IRWIN:

Q. Will you proceed to read the sub-vouchers to original voucher No. 2.

126 By the MASTER: No, I don't want you to do that, Mr. Irwin. You will have to go to court with that.

Mr. RITSHER: We would like to have the master rule this is not under the stipulation, if the master will do so, so that we can get a ruling.

By the MASTER: The master does rule that the offer to read these sub-vouchers is in violation of the stipulation and not in accordance with its terms.

Mr. IRWIN: We except to the ruling of the master.

Q. You have with you here all the sub-vouchers showing for what the money was expended as named and designated in original voucher No. 2, have you, Mr. Little?

A. Yes.

Q. Do you remember the number of the last original voucher read in evidence at the preceding examination.

A. My recollection is it was voucher No. 443.

Q. Have you sub-vouchers showing the expenditures and for what the money was expended that is named in each one of those respective vouchers?

A. Yes, I have.

Q. Showing the original voucher taken for the payment of the money, and for what the money was paid, as named in all of those original vouchers read in evidence?

A. Yes.

Mr. IRWIN: I now produce and offer to put in evidence in this case, for the purpose of verification of the expenditure of all the money shown to have been paid out by the original vouchers read in evidence and for the verification of the original vouchers, and also for the purpose of showing for what each particular amount of money was paid entering into the cost of the plant of the complainant, or the operation thereof from original vouchers Nos. 2 to 443 inclusive, read in evidence.

127 Mr. MANSFIELD: I object on the ground that it is incompetent and not being the best evidence and not being taken from the books of original entry.

By the MASTER: The master rules that the sub-vouchers offered may be admitted for the purposes only covered by the stipulation appearing in the record on page designated by reporter XX p. 74 of the proceedings had on Nov. 5, 1901.

To which ruling of the master, counsel for City of Peoria then and there duly excepted.

By the MASTER: Proceed with your examination, Mr. Irwin.

Q. Will you proceed then Mr. Little with the sub-vouchers to original voucher No. 2 and read them into the record for the purposes mentioned by the master.

By the MASTER: No sir, the master has already ruled on that, gentlemen; the stipulation expressly provides that the sub-vouchers

shall remain in court during the progress of the examination of the witnesses and be subject to inspection by the court, master or counsel during the progress of this hearing for verification of the original vouchers offered in evidence and for the purposes of cross examination, and that under this stipulation it is not competent for counsel to read into the record anything shown by the sub-vouchers.

To which ruling of the court counsel for complainant then and there duly excepted.

Mr. MANSFIELD: I want to——

By the MASTER: I want you to get on with this hearing. I am not going to be delayed any longer; the question is fully presented and preserved for the court, and it is proper now that you should preserve the question and then go on with the hearing in the
128 way provided for by this stipulation.

Mr. MANSFIELD: I want either to be bound by this stipulation or not be bound by this stipulation.

Mr. RITSHER: We are offering everything under the stipulation.

Mr. MANSFIELD: And if the complainant is not bound by the stipulation, I want to here make an exception to the introduction of the sub-vouchers as not being the best evidence and not taken from books of original entry.

By the MASTER: The master has already ruled both the complainant and yourself are bound by that stipulation.

Mr. MANSFIELD: All right, sir.

By the MASTER: In reference to the introduction of vouchers and sub-vouchers.

Mr. IRWIN: We simply offered the sub-vouchers under the provisions of the stipulation referred to by the master and intend to be bound thereby, believing that they are competent under the stipulation.

By the MASTER: The master has already ruled that they may be offered for the purposes specified in the stipulation and for no other whatever.

Mr. IRWIN:

Q. Will you proceed to read the vouchers in their consecutive order from the number you left off with at our previous adjournment.

A. I will state that vouchers No. 444 to 534½ were registered in the month of April, 1900 and were paid during the months of April and May 1900. Voucher No. 444 is for $2212.98 in favor of F. W. Little, vice-president; covers the pay-roll of the complainant
129 for the first half of April, 1900 and the voucher does not show to what account charged.

Mr. MANSFIELD: I object to its introduction then unless proof is offered to what account it is to be charged and object to it as being immaterial and incompetent.

By the MASTER: It may be admitted subject to the objection.

A. (Continuing.) Voucher No. 446 is for $300.. in favor of F. W. Little, vice-president and was charged to D. R. Russell. Voucher No. 447 is for $52.14, in favor of F. W. Little, vice-president and was charged to account No. 11, 90 cents; to account No. 41, $6.92; to the Akron Gas Company $43.47; the remainder of the voucher was charged to electric accounts. Voucher No. 448 is for $197.40 in favor of F. W. Little, vice-president, was charged to account No. 3, $58.17; to account No. 4, $4.80; to account No. 6, $104.77; to account No. 10, $8.30; to account No. 41., $19.76; to Schneider & Trenkamp, 60 cents; the remainder of the voucher was charged to electric account. No. 449 is for $16.75 in favor of F. W. Little, vice-president and was charged to account No. 41; No. 450 is for $75.00 in favor of C. D. Organ and was charged to account No. 1. No. 451 is for $300. in favor of F. W. Little, and was charged to account No. 1; No. 452 is for $6.20 in favor of the Equitable Trust Company and was charged to account No. 3. No. 453 is for $1041.67 in favor of Chicago national bank and was charged to interest account for account taxes. No. 454 is for $53.90, in favor of William Vogel & Bros. and is charged to account No. 41; No. 455 is for $8.63 in favor of the Westinghouse Electric & Manufacturing Co. and was charged to account No. 41; No 456 is for $1980.47 in favor of J. L. Flinn and was charged to account No. 41. No. 457 is for $706.80 in favor of A. Lucas & Sons, was charged to account No. 41. No. 458 is for $1436.08
130 in favor of Daniels Coal & Coke Company and was charged to account No. 41. No. 459 is for $1709.82 in favor of George M. Clark & Company and was charged to account No. 41. No. 460 is for $429.82 in favor of Daniels Coal & Coke Company, charged to account No. 41. No. 461 is for $1.50 in favor of Barker & Wheeler Company, charged to account No. 41. No. 462 is for No. 4. in favor of Buckeye Engine Company and is charged to account No. 41. No. 463 is for $44.35 in favor of the Baker-Vawter Company and is charged to account No. 10. No. 464 is for $10.54, in favor of Brass Foundry & Heating Company and was charged to account No. 41. No. 465 is for $15., in favor of Bradley Polytechnic Institute, charged to account 41. No. 466 is for $57.11, in favor of Central Electric Company and was charged to account No. 41. No. 467 is for $8.23 in favor of Colburn, Birks & Company, charged to account No. 41. No. 468 is for $2.85, in favor of Crawley Electric Company, charged to account No. 41. No. 469 is for $29.89 in favor of Cummings & Emerson, charged to account No. 41. No. 470 is for $326.96, in favor of Couch & Heyle and was charged to account No. 41. No. 471 is for $12.25, in favor of Comstock Avery Company, was charged to account No. 41. No. 472 is for $1.90, in favor of Central Union Telephone Company and is charged to account No. 3. No. 473 is for $40.88 in favor of Dearborn drug & chemical works, was charged to account No. 41. No. 474 is for $240.90, in favor of Diebold Safe & Lock Company and was charged to account No. 41. No. 475 is for $30.75, in favor of Dolan & Maher, charged to account No. 41. Voucher No. 476 was cancelled and not issued. Voucher No. 477 is for $18.22

in favor of the Day Carpet & Furniture Company; was charged to account No. 41. Voucher No. 478 is for $158.40, in favor of the
131 Electric Appliance Company, charged to account No. 41. Voucher No. 479 is for $14.85, in favor of C. Gentes & Son and was charged to account No. 11. Voucher No. 480 is for $1.44, in favor of Goodyear Rubber Company and was charged to account No. 41. Voucher No. 481 is for $6.65 in favor of Greiner stamp & stencil works, and is charged to account No. 41. Voucher No. 482 is for $32.40 in favor of Edwin Herrington Son & Company and was charged to accont No. 41. Voucher No. 483 is for $49.75 in favor of Hickox, Ridgely & Co., and is charged to account No. 41. Voucher No. 484 is for $118, in favor of H. W. Hovenden and is charged to account No. 41. Voucher No. 485 is in favor of Hunter & Strehlow, was charged to account No. 41. Voucher No. 486 is for $4.00 in favor of Jacquin & Co. and was charged to account No. 10. Voucher No. 487 is for $715.74 in favor of Kinsey & Mahler Company was charged to account No. 41. Voucher No. 488 is for $9.55 in favor of F. & L. Kahn & Bros. and is charged to account No. 41. Voucher No. 489 is in favor of Ludowici Roofing Tile Co. and was charged to account No. 41. Voucher No. 490 is for $11.70, in favor of Library Bureau, is charged to account No. 10, $10.50, and the remainder of the voucher was charged to electric accounts. Voucher No. 491 is for $516.70, in favor of A. Lucas & Sons and is charged to account No. 41. Voucher No. 492 is for $39.63 in favor of H. W. Lynch, is charged to account No. 41. Voucher No. 493 is for $516. in favor of John Maddigan, is charged to account No. 41. Voucher No. 494 is for $25.49, in favor of Manhattan General Construction Company, charged to account No. 41. Voucher No. 495 is for $653.17 in favor of McAleenan Boiler Company, is charged to account No. 41. Voucher No. 496 is for $46.53 in favor of McLaughlin Plumbing Co., charged to account No. 41. Voucher No. 497 is for $10, in favor of Morgan & Wright, charged to account No. 41. Voucher No. 498 is for $165., in favor of the Maryland Meter & Manufacturing
132 Company, is charged to account No. 41. Voucher No. 499 is for $1365.01 in favor of Michigan ammonia works, and is charged to account No. 41. Voucher No. 500 is for $3.75, in favor of Nixon Printing Company, and is charged to account 10. Voucher No. 501 is for $4.60, in favor of Post Printing Company, charged to account No. 4. Voucher No. 502 is for $3.20, in favor of Peoria Democrat, charged to account No. 4. Voucher No. 503 is for $14.40, in favor of Peoria Volksfreund Co., charged to account No. 4. Voucher No. 504 is for $44.00, in favor of P. F. Pettibone & Co., charged to account No. 10. Voucher No. 505 was charged to electric accounts. Voucher No. 506 is for $46.50 in favor of Peoria & Pekin Terminal Railway Co., charged to account No. 41. Voucher No. 507 is for $138.40 in favor of J. D. Peck, charged to account No. 41. Voucher No. 508 is for $21.50 in favor of Peoria steam marble works, charged to account No. 41. Voucher No. 509 is for $11.75, in favor of Peoria Printing & Stationary Company and is charged

to account No. 10. Voucher No. 510 is for $377.01, in favor of Proctor Lumber Co. and is charged to account No. 41. Voucher No. 511 for $7, is in favor of Peoria Foundry Company, and is charged to account No. 41. Voucher No. 511½ for $58.32, is in favor of the Pittsburg Transformer Company and is charged to account No. 41. Voucher No. 512 is for $4.20, in favor of H. A. Robinson Fuel Company and is charged to account No. 3. Voucher No. 513 for $4.50 in favor of Royal Oil Company is charged to account No. 41. Voucher No. 514 for $17.00 is in favor of Ryan & Hart Company and is charged to account No. 10. Voucher No. 515 is for $28.00 in favor of Shipper & Block Furniture Company and is charged to account No. 41. Account No. 516 is for $124.45 in favor of G. W. Smith Sons and is charged to account No. 41. Voucher No. 517 for $164.35 is in favor of the Standard Lighting Company
133 Voucher No. 518 is for $3.98, in favor of the Standard Oil Company and was charged to interest. Voucher No. 519 is for $20.95, in favor of H. Sandmeyer & Co., and was charged to account No. 41. Voucher No. 520 is for $168.55 in favor of Schneider & Trenkamp Company and was charged to account No. 41. Voucher No. 520½ is for $1.27, in favor of John C. Streidich and was charged to account No. 41. Voucher No. 521 for $14.51 is in favor of Thede Bros. and was charged to account No. 41. Voucher No. 522 is for $24.15, in favor of E. Weber and is charged to account No. 41. Voucher No. 523 is for $13.66 in favor of L. Philip Wolfe and was charged to account No. 4. Voucher No. 524 for $5.50 is in favor of C. E. Wheelock & Co. and was charged to account No. 41. Voucher No. 526 is for $3.50, in favor of Western Awning Company and is charged to account No. 3. Voucher No. 527 for $300, in favor of Western Electric Company and was charged to account No. 41. Voucher No. 528 is for $369.90, in favor of Wahlfield Manufacturing Company and was charged to account No. 41. Voucher No. 529 for $10, in favor of P. A. Flannagn, charged to account No. 41. Voucher No. 530 is for $357.05, in favor of Fardon & Brothers, is charged to account No. 41. Voucher No. 531 is for $2.10, in favor of Fisher Brothers, and is charged to account No. 3. Voucher No. 532 is for $40.25, in favor of J. W. Franks & Sons, charged to account No. 41. Voucher No. 533 is for $2635.25, in favor of the Akron Gas Company and is charged to account No. 41. Voucher No. 534 is for $349.99, in favor of F. W. Little, vice-president and is charged to account No. 3, $30.12; account No. 4, $5.00; account No. 6, $200; account No. 9, $1.70; account No. 10, $6.66; account No. 40, $20, and account No. 41, $86.51. Voucher No. 534½ is for $43,577.03 in favor of F. W. Little, vice-president, covers the
134 pay-roll for the second half of April, 1900 and the voucher does not show to what accounts it was charged. Vouchers No. 535 to 615 both inclusive were registered in the month of May, 1900 and paid in the months of May and June, 1900. Voucher No. 535 is for $55, in favor of the Hartford Deposit Company and was charged to account No. 6. Voucher No. 536 is for $2908.27 in favor

of F. W. Little, vice-president, covers the pay roll of the compa for the first half of May, 1900 and the voucher does not show what accounts the money was charged.

Mr. MANSFIELD: I except to the introduction of that voucher u less it is shown to whom payable and for what purpose.

By the MASTER: Admit it subject to the objection.

A. (Continuing:) Voucher No. 537 is for $1408.58, in favor of t John Davis Company and was charged to account No. 41. Vouch No. 538 is for $1324.35 in favor of John Davis Company and is charg to account No. 41. Voucher No. 539 for $300. in favor of F. W Little, was charged to account No. 1. Voucher No. 540 for $75.0 in favor of C. D. Organ, charged to account No. 1. Voucher N 541 for $37.28, payable to the Equitable Trust Company and w charged to account No. 3. Voucher No. 542 is for $196.60 in favor E. W. Blatchfird & Co. and is charged to account No. 41. Voucher N 542½ is for $1076.38 in favor of the Chicago national bank w charged to interest or account No. 7. Voucher No. 543 is for $2.0 in favor of H. E. Gobel, agent, and was charged to account No. Voucher No. 544 for $55. in favor of H. E. Gobel, agent and w charged to account No 3. Voucher No. 545 for $3233.03 in favor Daniels Coal & Coke Company and was charged to account No. 4 Voucher No. 546 for $1758.77 in favor of Parker-Russell Mining Manufacturing Company, was charged to account No. 4

135 Voucher No. 547 is for $335.31, in favor of F. W. Little, vic president, was charged to account No. 41. Voucher No. 5 for $3952.04 covers the pay roll for the second half of May, 1900; t voucher does not show to what accounts charged.

Mr. MANSFIELD; I object to the introduction of that voucher u less it is shown to whom payable and for what purpose.

By the MASTER: Admit it subject to the objection.

(Continuing:) Voucher No. 549 for $1039.14 in favor of F. W Little vice president was charged to account No. 3, $3.85; to accou No. 4, $2.00; to account No. 6, $1.76; to account No. 9, $5.00; t account No. 11, 55 cents; to account No. 41, $2573., J. J. Jobst $1,00 and the remainder of the voucher was charged to electric account Voucher No. 550 for $509.64 in favor of F. W. Little, vice-presiden was charged to account No. 3, $26. to account No. 4, $42.25; to ac count No. 10, $7.55; to account No. 11, $16.74; to account No. 4 $5.00; to account No. 41, $35.15; and the remainder of the accou was charged to electric accounts. Voucher No. 551 for $773.76 is i favor of the Akron Gas Company, and is charged to account No 41. Voucher No. 552 for $2.00 is in favor of the American Mete Company and is charged to account No. 41. Voucher No. 553 is fo $116.50 in favor of A. H. Andrews Company and is charged to ac count No. 41. Voucher No. 554 is for $23.10 in favor of Baker-Vawte Company and is charged to account No. 41. Voucher No. 555 is fo $1.25 in favor of Barker-Wheeler Company and is charged to accoun

No. 41. Voucher No. 556 is for $3.00 in favor of Breier Stables and is charged to account No. 41. Voucher No. 557 is for $192.90 in favor of Carney Rubber Company and was charged to account No. 41. Voucher No. 558 is for $17.70 in favor of William M. Crane & Co. and is charged to account No. 41. Voucher No. 559 is for $4.14 in favor of Central Electric Company and was charged to account
136 No. 41. Voucher No. 560 was for $3.43 in favor of Crawley Electric Company and was charged to account No. 41. Voucher No. 561 for $279.01 in favor of Geo. M. Clark & Co. and was charged to account No. 41. Voucher No. 562 for $153.95 in favor of Central Electric Company and was charged to account No. 41. Voucher No. 563 is for $63.34 in favor of Couch & Heyle and was charged to account No. 41. Voucher No. 564 for $17 in favor of Electric Appliance Company and was charged to account No. 41. Voucher No. 565 for $26.98 is in favor of Deitreichs Valveoleum Oil Company and was charged to account No. 41. Voucher No. 566 for $201.41 is in favor of Fairbanks, Morse & Company and was charged to voucher No. 41. Voucher No. 567 is for $3 and in favor of J. W. Franks & Sons and is charged to account No. 10. Voucher No. 568 is for $3.05 and is in favor of H. N. Frederick & Sons, charged to account No. 11. Voucher No. 569 is in favor of Fred Fueger, for $49.00 and charged to account No. 41. Voucher No. 570 is for $14.00 in favor of Greiner stamp & stencil works, and is charged to account No. 3. Voucher No. 571 is for $2.75, in favor of Edward Hine & Co., and is charged to account No. 10. Voucher No. 572 is for $62.64, in favor of Hunter & Strehlow, and was charged to account No. 41. Voucher No. 573 is for $133 in favor of H. W. Hovenden and is charged to account No. 11, $110 and the remainder of the voucher is charged to electric accounts. Voucher No. 574 for $16.16 is in favor of Jacquin & Company, charged to account No. 10. Voucher No. 575 for $6.75 is in favor of Jarecki Manufacturing Company and is charged to account No. 41. Voucher No. 576 is for $1784.35 in favor of Kinsie & Mahler Company and was charged to account No. 41. Voucher No. 577 for $20, in favor of George Light and is charged to account No. 41. Voucher No. 578 is for $42.62 in favor of H. W. Lynch and was charged to account No. 41.
137 Voucher No. 579 is for $63.57 in favor of A. Lucas & Sons and was charged to account No. 41. Voucher No. 580 is for $4.50, in favor of Library Bureau and is charged to account No. 10. Voucher No. 581 is for $10.00 and in favor of Frank McLaughlin Plumbing Company and was charged to account No. 41. Voucher No. 582 is for $7.95 in favor of the Manhattan General Construction Company and was charged to account No. 41. Voucher No. 583 is for $1848.70 in favor of Maryland Meter & Manufacturing Company, charged to account No. 41. Voucher No. 584 is for $46.05 in favor of Maryland Meter & Manufacturing Company and was charged to account No. 41. Voucher No. 585 is for $7.00, in favor of Mailon Brothers, and was charged to account No. 41. Voucher

No. 586 is for $3.00, in favor of Progressive Age and charged to ac
count No. 3. Voucher No. 587 is for $24.60 in favor of Peori
Volksfreund and was charged to account No. 4. Voucher No. 58
is for $6.52, in favor of J. D. Peck and was charged to account No
41. Voucher No. 589 in favor of Peoria steam marble works fo
$5.50 and was charged to account No. 41. Voucher No. 590 fo
$14.01 in favor of Peoria Fuel Company and was charged to accoun
No. 41. Voucher No. 591 for $80.95 in favor of P. F. Pettibone &
Co. was charged to account No. 41. Voucher No. 592 for $387.85 i
favor of Peoria & Pekin Terminal Railway Company was charge
to electric accounts.

Voucher No. 593 for $6.40 in favor of Post Printing Company wa
charged to account No. 4. Voucher No. 594 for $109.50 in favor o
Peoria Journal was charged to account No. 4. Voucher No. 595 fo
$38.87 in favor of Proctor Lumber Co. was charged to account No
41; voucher No. 596 for $9.81 in favor of H. Sandmeyer & Co. wa
charged to account No. 41. Voucher No. 597 for $12.07 in favor o
Standard Oil Company was charged to account No 41
138 Voucher No. 598 for $15.70 in favor of John C. Streibich wa
charged to account No. 10. Voucher No. 599 for $1011.0
in favor of Schneider & Trenkamp Company was charged to ac
count No. 41. Voucher No. 600 for $3.60 in favor of Schneider &
Trenkamp was charged to account No. 41. Voucher No. 601 fo
$2.90 in favor of Shipper & Block Company was charged to accoun
No. 3. Voucher No. 602 for $8.95 in favor of W. F. Seehaas wa
charged to account No. 41. Voucher No. 603 for $9.20 in favor o
D. S. Snyder was charged to account No. 41. Voucher No. 604 fo
$294.41 in favor of Standard Lighting Company was charged to ac
count No. 41. Voucher No. 605 for $29.83 in favor of Thied
Brothers was charged to account No. 41. Voucher No. 606 for $10
in favor of D. H. Tripp & Co. was charged to account No. 10
Voucher No. 607 in favor of L. Philip Wolfe Manufacturing Com
pany for $23.90 was charged to account No. 4. Voucher No. 608
for $36.20 in favor of Wallfeld Manufacturing Company was charged
to account No. 41. Voucher No. 609 for $1.75 in favor of Wagner
Electric & Manufacturing Company was charged to account No. 41
Voucher No. 610 for $450.00 in favor of Western Electric Company
was charged to No. 41. Voucher No. 611 for $6.20 in favor of the
Wilson Grocery Company was charged to account No. 3. Voucher
No. 612 for $38.10 in favor of J. C. West was charged to account No
41. Voucher No. 613 for $4000.00 in favor of the Daniels Coal &
Coke Company was charged to account No. 41. Voucher No. 614
for $41,000.00 in favor of Lyman A. Walton, treasurer, was charged
to land & buildings account No. 32. Voucher No. 615 for $146.06
in favor of the Chicago national bank was charged to account No. 3.
Voucher No. 616 for $13,500. in favor of D. R. Russell for $500. in
favor of Parker-Russell Mining & Manufacturing Company $8,000.;
Stacy Manufacturing Company $5,000, and charged to the respect-
ive parties.

Whereupon an adjournment was taken to 2 o'clock p. m.

139 2 o'clock p. m., met pursuant to adjournment.

Present: Same as before.

MR. RITSHER: On consultation with Mr. Irwin this noon, we have concluded that if you now wish to stipulate to accept the formal stipulation presented this morning, striking out the words "and were proper expenditures," we will accept the stipulation,—in other words, the stipulation offered Saturday with the words "and were proper expenditures" stricken out.

By the MASTER: It is here stipulated by and between counsel in this case as follows: "In order to save the time and expense incident to making further formal proof of the cost of the construction and operation of the plant of the Peoria Gas and Electric Company and to avoid the necessity for introducing several thousand vouchers,

It is here stipulated and agreed by and between the respective parties by their respective counsel, that the witness F. W. Little may testify as to the total amount of expenditures made by the complainant company in and about the construction and operation of the gas plant of said company from the time of the organization of the complainant company to September 1, 1901, as shown by the vouchers and books of the company, stating the totals of the various accounts under which said expenditures are entered;

It is further stipulated that in the event that said Little shall testify that said totals are true totals, as shown by the books and vouchers of said company, and represent all the actual expenditures made by said company during said period in and about the construction and operation of the gas plant of said company, and that the vouchers, duplicate vouchers and sub-vouchers, showing

140 all said expenditures in detail, are present in court for inspection and examination by the special commissioner and counsel for the parties, then and in that event no objection shall be made by the defendant to the competency of such evidence, but it shall be and hereby is admitted that such expenditures were in fact made and that the said expenditures are charged to the proper accounts.

It is further stipulated that for the purpose of attacking and verifying such expenditures, or any of them, the said vouchers, duplicate vouchers and sub-vouchers, throughout the pendency of this suit before said special commissioner, shall be subject to examination by counsel for defendant or by any qualified public accountant in his behalf, at all reasonable times during business hours at the office of the company in Chicago, subject to such regulations as may be imposed from time to time by the court.

Q. Mr. Irwin, will you look at Exhibit No. 8 and state what that represents?

A. Exhibit No. 8 represents the classification of the accounts covering expenditures of the Peoria Gas & Electric Company which went into effect on the first day of May, 1899.

Q. Were the books of the Peoria Gas & Electric Company, so far as pertains to the gasplant of the company, kept in the manner provided by that book, Exhibit 8?

A. Yes, they were.

Q. And have been during the entire period of the organization of that company and operation?

A. They have. This classification was adopted in May, 1899 and continues down to the present time.

Q. How are the accounts designated in the book, the several accounts?

A. The accounts of the Peoria Gas & Electric Company
141 are first subdivided under the general headings of general expense,—manufacturing——

Mr. MANSFIELD: I object to this as immaterial; this has been once testified to; no use in encumbering the record in that way.

By the MASTER: Answer subject to the objection.

A. (Continuing:) Distribution, miscellaneous, repairs and renewals plant account and additions to property, and miscellaneous accounts. These various general headings are again subdivided, as is shown in the book Exhibit 8.

Q. Into how many consecutive numbers?

A. The total numbers are from 1 to 41 both numbers inclusive.

Mr. IRWIN: I now offer this Exhibit No. 8 in evidence for the purpose of showing how the accounts of the complainant company have been kept.

Mr. MANSFIELD: Objected to as immaterial.

By the MASTER: You offer that portion of it embraced within the numbers 1 to 41 inclusive.

Mr. IRWIN: That is right, under the head of the Peoples Gas & Electric Company, Peoria Illinois, classification of accounts; then the general headings and classifications from numbers 1 to 41 inclusive.

Mr. MANSFIELD: That is objected to as immaterial.

Mr. IRWIN: That is contained on pages 2 to 9 inclusive of the Exhibit 8.

By the MASTER: You offer that as an exhibit, do you?

Mr. IRWIN: Yes sir, offer it in evidence for the purpose of simply showing how the accounts have been kept?

By the MASTER: Is it now offered to be made a part of the
142 record or as an exhibit in the case?

Mr. IRWIN: Both ways.

By the MASTER: Then it will have to be copied in the record, and also stand as an exhibit in the case.

Mr. MANSFIELD: Objected to on the ground of immateriality and incompetency and under the stipulation in this case, that the ledger totals would be the best evidence and that the accounts should be designated in connection therewith.

By the MASTER: It may be admitted subject to the objection and is in words and figures following, to-wit:

"People's Gas and Electric Company, Peoria, Ill.

Classification of Accounts.

General expense.

No. 1. Salaries of officers.—Salaries of all general officers, including president, secretary, treasurer and superintendent, except as otherwise provided for.

No. 2. Accounting department.—Salaries of assistants to treasurer, cashier, book-keepers and all clerks employed in the accounting department, including salary of storekeeper.

No. 3. General office sundries.—Includes all expenses of officers and other incidentals, telephone and petty office expenses and small supplies for office.

No. 4. Canvassing.—The compensation for the procure-ent of customers. The salaries of soliciting agents and their expenses.

No. 5. Insurance.—The cost of insuring property against fire; all accident, steam boiler, or employer's liability and fidelity.

No. 6. Rentals.—Includes rentals of offices, telephones and all other rentals.

No. 7. Interest.—Includes all interest charges.

No. 8. Taxes.—Includes taxes of all descriptions.

No. 9. Legal expenses and loss and damage account.—Includes salaries and fees of all sorts; of attorneys' and all legal and court expenses whatever the cause of the litigation may be, and losses resulting from injury to persons or damage to property.

No. 10. Stationery, printing and postage.—Includes all expenses for stationery, printing and postage.

No. 11. Stable expenses.—Cost of all horses, wagons, harness, shoeing repair and feed bills on account of same, and wages of hostler.

No. 12. Discounts.—Covers all discounts on gas bills (ac-
143 cording to rules of the company) allowed for payments of same on or before the 12th of the month following that in which gas was consumed, and special discounts allowed by general manager.

Manufacturing.

No. 13. Generator fuel.—Includes the cost of all coke and coal, used in manufacture of water gas expenses of handling same, and freight.

No. 14. Gas coal.—Includes cost of same as determined by storeroom, unit and cost of handling into retorts.

No. 15. Boiler fuel.—Includes cost of coal or other substances used under boilers, and cost of handling same.

No. 16. Bench fuel.—Includes cost of coal, coke or tar used for firing benches, together with cost of handling same.

No. 17. Manufacturing labor.—Includes wages of engineers, firemen, gas makers and labor of all employés in and about the works for the manufacture of gas not otherwise classified.

No. 18. Manufacturing supplies.—Includes cost of lubricating oils, waste, packing, etc. used in and about engine room and generator room, together with freight and cartage.

No. 19. Oil.—Cost of naphtha or gas oil, together with freight on same, if paid by the company, and cost of handling.

No. 20. Enrichers.—Includes cost of oil, naphtha, or coal used for this purpose, together with cost of handling same.

No. 21. Purification labor.—Cost of all labor in handling of purifying materials in the manufacture of gas, and work in and about the purifying house.

No. 22. Purification supplies.—Cost of all materials used for purifying, together with freight, cartage and handling.

Distribution.

No. 23. Distribution labor.—Includes car fares and wages of meter readers, car fares and wages of man engaged in the distribution of bills, attending to frozen service mains, car fares of collectors and their wages, cleaning tips and pumping drips.

No. 24. Distribution supplies.—Tips and supplies furnished customers gratis, and labor and expense of removing and setting old meters.

No. 25. Street lamp operating.—Cost of all labor and material used in lighting, extinguishing and maintaining street lamps.

Miscellaneous.

No. 26. Miscellaneous supplies and expenses.—This includes all small supplies and renewal of tools which may be furnished to or incurred at works, which can not be charged to repairs or renewals, and includes cleaning engine room, generator room, yard, etc.

Repairs and renewals.

No. 27. Repairs and renewal of meters.—All labor, materials and car fares used in this connection.

No. 28. Repairs and renewal of services.—All labor, material and car fares used in this connection.

No. 29. Bench repairs.—Includes cost of materials and labor used in this connection.

No. 30. Gas house and machinery repairs and renewals.—All labor and materials used in this connection.

No. 31. Repairs and renewals of mains.—All labor, materials and car fares, also cost of removing and replacing street pavement.

Plant account.

No. 32. Land and buildings.—Cost of all real estate purchased, including fees for examination of title and guarantee policies.

Additions to property.

No. 33. Extension of mains.—Cost of all labor and material and expenses connected therewith; new work only.

No. 34. Manufacturing plant.—Includes cost of retorts, generators, purifiers, pumps, exhausters, holders, separators and other apparatus used in the manufacture and storage of gas and its residuals.

No. 35. New meters.—The store-room unit price of all meters taken from stock for setting.

No. 36. New services.—Cost of all labor and material and
144 expenses connected therewith, which are to be furnished gratis.

No. 37. Tools and implements.—New tools only.

NOTE.—Tools and implements bought to replace those old or worn out, should be charged to the proper operating or repair and renewal account.

No. 38. Furniture and fixtures.—First cost of all office furniture and fixtures. Renewals and repairs to be charged account No. 3.

Miscellaneous accounts.

No. 39. Accounts receivable.—This account covers the billed accounts for service sales, stove sales, store-room sales, coke sales, tar sales, ammonia sales and fitting sales.

No. 40. Sales account.—This account will be debited with all material used and labor employed in mercantile sales and job work, and credited with the cost of completed work billed. Such completed work will be reported to the general office, by abstract, at the close of the month, giving the cost of the work and the billed amount charged to customers.

No. 41. Store-room.—This account represents all materials purchased, and the balance of the account represents the materials on hand. All purchases for stock except as otherwise provided for, to be charged this account. This account to be credited with all deliveries from store-room and the respective accounts for which the deliveries were made, debited.

All coke, breeze, tar, ammonia or other residuals from gas making are to be debited to this account, and this account to be credited with the cost of same when sold or used by the company.

145 Q. Mr. Little, can you state the amount paid by the complainant company for the salaries of officers under account No. 1 from the time of the organization of the company up to September 1st, 1900 as shown by the vouchers and books of the company, stating the totals?

A. Yes.

Q. What was that amount?

Mr. MANSFIELD: I object unless the ledger is brought in and the items shown as being on the ledger.

By the MASTER: Let him answer subject to the objection.

Mr. MANSFIELD: Under the stipulation in this case.

By the MASTER: I take it you gentlemen are limiting this inquiry as to the gas plant exclusively.

Mr. IRWIN: Yes.

By the MASTER: No use encumbering the record with anything else.

Mr. RITSHER: We have told him to confine himself to that and I have a notation here to cover that at the end of his examination by a general question.

Mr. MANSFIELD: I object, under the stipulation it is incompetent and immaterial.

By the MASTER: Answer subject to the objection, yes or no.

Mr. MANSFIELD:—and not the best evidence.

Q. Please state the amount so paid.

A. From the organization of the company to September 1st, 1900, there was paid as salaries to officers, the sum of $10,482.57.

Q. Can you tell the amount of salaries paid to officers under account No. 1 by the complainant company from May 1st, 1900 to September 1st, 1900 as shown by the vouchers and books of the company.

146 Mr. MANSFIELD: Objected to as immaterial and incompetent under the stipulation filed in this case.

By the MASTER: That covers part of the same ground covered by the previous question, Mr. Irwin?

Mr. IRWIN: Yes, sir.

By the MASTER: Answer that question yes or no.

A. Yes.

Q. Will you please state the amount?

A. The salary paid to officers covering the period from May 1st to August 31, 1900, as shown by the books of the company, amounted to $2741.67.

Mr. MANSFIELD: If it please the master, as I understand this stipulation, it covers the amounts and the various accounts that have been paid out from May 1st to September 1st, 1901. I am willing to allow these ledger accounts to go in for that purpose, covering that period, to show the expense of the construction of that plant and the operation of that plant, up to that date. Now, Mr. Irwin is trying to get in here another matter entirely, which I am not prepared to admit, and which I will not admit under any circumstances, and I think the master ought to confine them to this stipulation in this regard.

By the MASTER: The master has no means of knowing or determining that they are not going to ask the same question covering the entire period.

Mr. MANSFIELD: That is all that they can ask.

By the MASTER; I take it they are; but I can't say to them, you

shall cover the entire period in one question; suppose they divide it into periods of three months each.

147 Mr. MANSFIELD. Would not show the sum totals.

By the MASTER: I think perhaps the sum totals will be shown; I can't tell as far as they have gone what their purpose is just yet.

Q. Can you state the amount of money paid out by the complainant company on accounting department on account No. 2 from the date of the organization of the company to May 1st, 1900?

Mr. MANSFIELD: Objected to as immaterial.

Q. As shown by the vouchers and books of the company?

Mr. MANSFIELD: And also as incompetent under the stipulation on file in this case.

By the MASTER: Answer subject to the objection.

A. Yes.

Q. Please state the amount?

A. $6549.46.

Q. Can you state the amount paid out under account # 2 for accounting department of your company from May 1st, 1900 to August 31, 1900 inclusive, as shown by the books and vouchers of the company?

A. Yes.

Q. Please state the amount?

Mr. MANSFIELD: Objected to as incompetent and immaterial under the stipulation on file in this case.

A. $1551.70.

Q. Can you state the amount paid out by the complainant company under account No. 3 for general office sundries from the date of the organization of the company to May 1st, 1900, as shown by the books and vouchers of the company.

Mr. MANSFIELD: Same objection.

A. Yes.

By the MASTER: Answer subject to the objection.

148 Q. Please state what the amount was?

A. $1903.33.

Q. Can you state the amount paid out under account No. 3 for general office sundries from the first of May, 1900 to the 31st day of August, 1900 inclusive, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Objected to as incompetent under the stipulation and for the reason that it is not the best evidence.

By the MASTER: Let him answer subject to the objection.

A. Yes.

Q. Please state what that amount was?
A. $1096.72.
Q. Can you state the amount paid out by your company under account No. 4 for canvassing, from the date of the organization of the company to May 1st, 1900.

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. Yes.
Q. As shown by the books and vouchers of the company?
A. Yes.
Q. Please state what that amount was?
A. $581.35.
Q. Can you state what was paid out by your company under account No. 4 for canvassing, between the first day of May, 1900 and the 31st day of August, 1900 inclusive, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. Yes.
Q. Please state what that amount was?
A. $1699.88.

149 Q. Can you state what amount your company paid out under account No. 5 for insurance from the date of the organization of the company to the first day of May, 1900 as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. Nothing.
Q. Can you state what amount of insurance was paid out by your company under account No. 5 between the first day of May, 1900 and the 31st day of August, 1900 inclusive, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. Yes.
Q. Please state what that amount was?
A. $2655.25.
Q. Can you state what amount your company paid out under account No. 6 for rentals from the date of the organization of the company to the first day of May, 1900 as shown by the books and vouchers of the company?

By Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. Yes.

Q. Please state what that amount was.
A. $1230.
Q. Can you state the amount paid out by your company under account No. 6 for rentals between the first day of May, 1900 and the 31st day of August, 1900 inclusive, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to objection.

150 A. Yes.
Q. Please state what that amount was?
A. $433.43.
Q. Can you state the amount paid out by the complainant company under account No. 7 for interest between the date of the organization of the company and the first day of May, 1900, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to objection.

A. Yes.
Q. Please state what that amount was?
A. $16,546.58.
Q. Can you state what amount your company paid out under account No. 7 for interest from the first day of May, 1900 to the 31st day of August, 1900, inclusive, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. No charges were made to the interest account during the period mentioned.
Q. Can you state what amount your company paid out under account No. 8 for taxes between the date of the organization of the company and the first day of May, 1900 as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. Yes.
Q. Please state that amount?
A. The amount charged to taxes during the period mentioned was $1228.92.
Q. Can you state the amount paid out by the complainant company under account No. 8 for taxes between the first day of
151 May, 1900 and the 31st day of August, 1900 inclusive?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to objection.

A. The amount charged to taxes during the period mentioned was $828.88.

Q. Can you state the amount paid out by the complainant company under account No. 9 for legal expenses, loss and damages, from the date of the organization of the company to the first day of May, 1900 as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to objection.

A. Yes.
Q. Please state the amount?
A. $2213.92.
Q. Can you state the amount paid out by your company under account No. 9 for legal expenses, loss and damages from the first day of May, 1900 to the 31st day of August, 1900, inclusive, as shown by the books and vouchers of the company.

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. Yes.
Q. Please state what that amount was?
A. The amount was $432.50.
Q. Can you state the amount paid out by the complainant company under account No. 10 for stationery, printing and postage, as shown by the books and vouchers of the company from the date of the organization of the company to the first day of May, 1900?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. Yes.
Q. Please state what that amount was?
152 A. $1723.83.
Q. Can you state the amount paid out by the complainant company under account No. 10 for stationery, printing and postage, as shown by the books and vouchers of the company from the first day of May, 1900 to the 31st day of August, 1900, inclusive, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. Yes.
Q. Please state the amount.
A. $461.63.
Q. Can you state the amount paid out by the complainant company under account No. 11 for stable expenses between the date of the organization of the company and the first day of May, 1900, as shown by the books and vouchers of the company.

Mr. MANSFIELD: Same objection.

By the MASTER: Answer subject to the objection.

A. Yes.
Q. Please state the amount?
A. $2200.52.

Q. Can you state the amount paid out by the complainant company under account No. 11 as shown by the books and vouchers of the company between the first day of May, 1900 and the 31st day of August, 1900 as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. Yes.
Q. Please state?
A. $894.24.

Q. Can you state the amount paid out by the complainant company under account No. 13 as shown by the books and
153 vouchers of the company for generator fuel between the date of the organization of the company and the first day of May, 1900?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. There was nothing paid out on that account.

Q. Can you state the amount paid out under account No. 13 between the first day of May, 1900 and the 31st day of August, 1900, as shown by the books and vouchers of the company for generator fuel?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. The books show no payments to that account during the period mentioned.

Q. Can you state the amount paid out by the complainant company under account No. 14 for gas coal, as shown by the books and vouchers of the company between the date of the organization of the company and the first day of May, 1900?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. Yes.
Q. Please state the amount?
A. The value of the gas coal used during the period mentioned, as shown by the books of the company, was $1681.99; more coal than this amount was purchased, but the amount stated is the value of the coal which was used during the period mentioned, as shown by the books of the company.

Q. Can you state the amount expended or used under account

No. 14 for gas coal between the first day of May, 1900 and the 31st day of August, 1900 inclusive, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
154 By the MASTER: Answer subject to the objection.

A. The amount in value of the gas coal used during the period mentioned, as shown by the books of the company was $5829.79.

Q. Can you state the amount paid out by your company under account No. 15 for boiler fuel from the date of the organization of the company to May 1st, 1900, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to objection.

A. Yes.

Q. Please state the amount?

A. The value of the boiler fuel used during the period mentioned, as shown by the books of the company was $303.63.

Q. Can you state the amount paid out by your company, or used under account No. 15 for boiler fuel from the first day of May, 1900 to the 31st day of August, 1900, inclusive, as shown by the books and vouchers of the company?

A. Yes.

Mr. MANSFIELD: Same objection.

Q. Please state the amount?

A. The value of the boiler fuel used during the period mentioned was $91.24.

Q. Can you state the amount paid out by the complainant company under account No. 16 for bench coal, as shown by the books and vouchers of the company from the date of the organization thereof to the first day of May, 1900?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. Yes.

Q. Please state the amount?

A. The value of the bench coal used during the period mentioned was $812.73.

155 Q. Can you state the amount paid out by your company under account No. 16 for bench fuel from the first day of May, 1900, to the 31st day of August, 1900, inclusive, as shown by the books and vouchers of the company.

A. The value of the bench coal used during the period mentioned was $1337.69.

Q. Can you state the amount paid out by the complainant company under account No. 17 for manufacturing labor from the date

of the organization of the company to the first day of May, 1900, yes or no.

Mr. MANSFIELD: Same objection.
The MASTER: Answer subject to the objection.

A. Yes.
Q. Please state the amount.
A. $1129.32.
Q. Can you state the amount paid out under account No. 17 for manufacturing labor from the first day of May, 1900 to the 31st day of August 1900, inclusive, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.

A. Yes.
Q. Please state the amount?
A. $3135.31.
Q. Can you state the amount paid out by the complainant company under account No. 18 for manufacturing supplies from the date of the organization of the company to the first day of May, 1900?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. There was nothing paid by the company during the period mentioned for manufacturing supplies.

156 Q. Can you state the amount paid out by your company under account No. 18 for manufacturing supplies between the first day of May, 1900 and the 31st day of August, 1900 inclusive, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. Yes.
Q. Please state the amount?
A. $82.70.
Q. Can you state the amount paid out by your company under account No. 19 for oil, from the date of the organization of the company to the first day of May, 1900, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

A. There were no payments made for oil during the period mentioned.
Q. Can you state the amount paid out by your company on account No. 19 for oil from the first day of May, 1900 to the 31st day of August, 1900, inclusive, as shown by the books and vouchers of your company?

A. There were no payments made for oil during the period mentioned.

Q. Can you state the amount paid out by your company under account No. 20 for enrichers from the date of the organization of the company to the first day of May, 1900, as shown by the books and vouchers of the company?

A. Yes.

Mr. MANSFIELD: Same objection.
Same ruling.

Q. Please state the amount?

A. $313.67.

Q. Can you state the amount paid out by your company under account No. 20 between the first day of May, 1900 and the
157 31st day of August, 1900 for enrichers as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Same ruling.

A. Yes.

Q. Please state the amount?

—. $598.68.

Q. Can you state the amount paid out under account No. 21 for purification labor from the date of the organization of the company to the first day of May, 1900 as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Same ruling.

A. Yes.

Q. Please state the amount?

A. $385.45.

Q. Can you state the amount paid out under account No. 21 for purification labor between the first day of May, 1900 and the 31st day of August, 1900, inclusive, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to objection.

A. Yes.

Q. Please state the amount?

A. $205.75.

Q. Can you state the amount paid out by the company under account No. 22 for purification supplies from the date of the organization of the company to the first day of May, 1900, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to the objection.

158 A. Yes.

Q. Please state?

A. $1141.61.

Q. Can you state the amount paid out under account No. 22 for purification supplies between the first day of May, 1900 and the 31st day of August, 1900, inclusive, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.

By the MASTER: Answer subject to objection.

A. Yes.

Q. Please state?

A. $181.52.

Q. Under manufacturing,—can you state the amount paid out under account No. 23 for distribution labor, as shown by the books and vouchers of the company between the date of its organization and the first day of May, 1900?

Mr. MANSFIELD: Same objection.

By the MASTER: Same ruling.

A. The amounts paid out under account No. 23 are a subdivision of the general distribution account,—not of the manufacturing account. I know the amount paid out under account No. 23 as shown by the books of the company.

Q. Please state the amount?

A. The amount was $368.45.

Q. Can you state the amount paid out under account No. 23 for distribution labor between the first day of May, 1900 and the 31st day of August, 1900, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.

By the MASTER: Answer subject to the objection.

A. Yes.

Q. Please state?

A. $809.24.

159 Q. Can you state the amount paid under account No. 24 for distribution supplies from the date of the organization of the company to the first day of May, 1900, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.

The MASTER: Same ruling.

Q. Please state?

A. $310.00.

Q. Can you state the amount paid out by your company under account No. 24 from the first day of May, 1900 to the 31st day of August, 1900, inclusive, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to objection.

A. Yes.
Q. Please state?
A. $24.63.

Q. Can you state the amount paid out by your company unde account No. 26 for miscellaneous supplies and expenses from th date of the organization of the company to the first day of Ma 1900, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
The MASTER: Answer subject to objection.

A. Yes.
Q. Please state?
A. $112.17.

Mr. MANSFIELD: I want to offer an objection and ask that all th totals as testified to by Mr. Little in regard to the cost of operatin or the cost rather of constructing the plant previous to May 1s 1900, be stricken out on the ground of immateriality, incompetenc and as not being items which should be charged up to the cost o constructing the gas works.

160 Q. Can you state the amount paid out by your company under account No. 26 for miscellaneous supplies and expense from the first day of May, 1900 to the 31st day of August, 1900, a shown by the books and vouchers of the company?

Mr. MANSFIELD: Same objection.
By the MASTER: Answer subject to objection.

A. Yes.
Q. Please state?
A. $293.26.

Q. Can you state the amount paid out by your company on ac count No. 12 for discounts from the date of the organization of the company to the first day of May, 1900, as shown by the books and vouchers of the company?

A. The books and vouchers of the company show no charges to account No. 12 during the period mentioned.

Q. Can you state amount paid out by your company on account No. 12 for discounts from the first day of May, 1900 to the 31st day of August, 1900, as shown by the books and vouchers of the company.

Same objection by defendant. Same ruling by master.

A. I can not; I have not that information available.
Q. Can you get that information?
A. Yes.
Q. Will you, and be ready to answer at some future sitting?
A. Yes.

Q. Can you state the amount paid out by your company on account No. 25 for street lamp operating between the date of the organization of the company and the first day of May, 1900 as shown by the books and vouchers of the company?

Same objection by defendant. Same ruling by master.

A. There were no charges made to account No. 25, street lamp operating during the period mentioned.

Q. Can you state the amount paid out by your company under account No. 25 for street lamp operating between the first day of May, 1900 and the 31st day of August, 1900, inclusive, as shown by the books and

161 Same objection by defendant. Same ruling by master.

A. There were no amounts paid out by the company during the period mentioned charged to account No. 25.

Q. Can you tell me the amount paid out under account No. 27, repairs and renewals of meters between the date of the organization of the company and the first day of May, 1900, as shown by the books and vouchers of the company?

Same objection by defendant. Same ruling by master.

A. No amounts charged to that account during the period mentioned.

Q. Can you state the amount paid out under account No. 27 for repairs and renewals of meters between the first day of May, 1900 and the 31st day of August, 1900, inclusive, as shown by the books and vouchers of the company?

Same objection by defendant. Same ruling by master.

A. Yes.

Q. Please state the amount?

A. $9.22.

Q. Can you state the amount paid out under account No. 28 for repairs and renewals of services from the date of the organization of the company to May 1st, 1900, as shown by the books and vouchers of the company?

Same objection by defendant. Same ruling by master.

A. There were no amounts paid out and charged to that account during the period mentioned.

Q. Can you state the amount paid out under account No. 28 for repairs and renewals of services from the first day of May, 1900 to the 31st day of August, 1900, inclusive, as shown by the books and vouchers of the company?

Same objection by defendant. Same ruling by master.

A. Yes.

Q. Please state?
A. $58.76.

Q. Can you state the amount paid out under account No.
162 29 for bench repairs between the date of the organization of the company and the first day of May, 1900, as shown by the books and vouchers of the company?

A. There were no amounts paid out or charged to the account mentioned during the period mentioned.

Q. Can you state the amount paid out under account No. 29 for bench repairs between the first day of May, 1900 and the 31st day of August, 1900, inclusive as shown by the books and vouchers of the company.

Same objection by defendant. Same ruling by master.

A. $35.80.

Q. Can you state the amount paid out under account No. 30, gas house and machinery repairs and renewals, from the date of the organization of the company to the first day of May, 1900, as shown by the books and vouchers of the company?

A. There were no amounts paid out or charged to the account mentioned during the period mentioned.

Q. Can you state the amount paid out under account No. 30 for gas house and machinery repairs and renewals from the first day of May, 1900 to the 31st day of August, 1900, as shown by the books and vouchers of the company?

A. Yes.

Same objection by defendant. Same ruling by master.

Q. Please state the amount?
A. $199.34.

Q. Can you state the amount paid out under account No. 31 for repairs and renewals of mains between the date of the organization of the company and the first day of May, 1900, as shown by the books and vouchers of the company?

A. There were no amounts paid out or charged to the account mentioned during the period mentioned.

Q. Can you state the amount paid out under account No. 31 for repairs and renewals of mains between the first day of May,
163 1900 and the 31st day of August, 1900, as shown by the books and vouchers of the company?

Same objection by defendant. Same ruling by master.

A. Yes.
Q. Please state?
A. $215.63.

Q. Can you state the amount paid out under account No. 32 for lands & buildings from the date of the organization of the company to the first day of May, 1900, as shown by the books and vouchers of the company?

Same objection by defendant. Same ruling by master.

A. Yes.

Q. Please state?

A. $98,322.64.

Q. Can you state the amount paid out under account No 32 for lands & buildings between the first day of May, 1900 and the 31st day of August, 1900?

Same objection by defendant; same ruling by master.

A. My previous answer to the previous question includes the amount paid up to the first day of September. I haven't available the amount that had been paid to that account at May 1st, 8—up to May 1st.

Q. Can you tell about what proportion of that amount was paid up——

By the Master: Your answer there covers the period up to May 31, 1900, did it?

A. No, the amount that was covered,—what was intended to be covered by that answer to the question was the amount which had been expended up to the first day of September in the construction account; that is to say, in the land and buildings account.

By the Master: That is 1900?

A. That is September, 1900.

Q. Can you get from the books and vouchers of the company the amount paid out by the company between the date of its organization and the first day of May, 1900?

164

Same objection by defendant; same ruling by master.

A. Yes sir.

Q. Will you give that amount so as to be interrogated n reference thereto at some future sitting?

A. Yes.

Q. Can you give the amount paid out by your compary under account No. 33 for extension of mains between the date of the organization of the company and September 1st, 1900?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state the amount?

A. The amount paid for the main system of the company from the organization of the company to September 1st, 1900 was $129,081.15.

Q. Can you state from the books and vouchers of the company what proportion of that amount was for labor and what proportion for material?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state?

A. $40,708.36 was for labor and $79,372.79 was for materials.

Q. Can you state the amount paid out by your company under account No. 34 for manufacturing plant from the date of its organization to the first day of September, 1900, as shown by the books and vouchers of the company?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state?

A. $107480.15.

Q. Can you state from the same books and vouchers the proportion of that amount paid out for labor and the proportion paid out for material?

165 Same objection by defendant; same ruling by master.

A. Yes.

Q. Please give the items?

A. $13,994.22 was paid out for labor and $93,485.93 was paid out for material.

Q. Can you state the amount paid out by the complainant under account No. 35 for new meters froom the date of its organization to the first day of September, 1900, as shown by the books and vouchers of the company?

A. Yes.

Same objection by defendant; same ruling by master.

Q. Please state the amount?

A. $13,174.26.

Q. Can you state from the same books and vouchers the proportion of that amount paid out for labor and the proportion for material?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state?

A. $1963.65 was paid out for labor and $11,210.61 was paid out for material.

Q. Can you state the amount paid out by your company under account No. 36 for new services between the date of its organization to the first day of September, 1900, as shown by the books and vouchers of the company.

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state?

A. $38,575.94.

Q. Can you state what portion of that amount was for labor and what portion for material, as shown by the books and vouchers of the company.

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state?

A. $16,582.50 was for labor and $21,993.44 was for material.

166 Q. Can you state the amount paid out under account No. 37 for tools and implements from the date of the organization of the company to the first day of September, 1900, as shewn by the books and vouchers of the company?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state?

A. $5288.37.

Q. Can you state what portion of that amount was paid out for labor and what portion for material, as shown by the books and vouchers of the company?

A. $63.38 was for labor and $5224.99 was for material.

Q. Can you state the amount paid out by your company under account No. 38 for furniture and fixtures from the date of its organization to the first day of September, 1900, as shown by the books and vouchers of the company.

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state the amount?

A. $2852.01.

Q. Can you state what portion of that amount was for labor and what for material, as shown by the books and vouchers of the company?

A. Yes.

Q. Please state?

A. $304.62 was for labor and $2547.39 was for material.

Q. Can you state the total cost of the plant of the complainant from the date of its organization up to the first of September, 1900, as shown by the books and vouchers of the company?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state the total amount?

A. $434,252.35.

167 Q. Can you state the amount of money paid out by your company under account No. 39, accounts receivable from the date of its organization to the first day of September, 1900, as shown by the books and vouchers of the company?

Same objection by defendant; same ruling by master.

A. Account No. 39, accounts receivable is a miscellaneous account, which has nothing whatever to do with the construction of the

plant; it merely assembles the various accounts which are due and payable to the company.

Q. Can you state the amount paid out by your company under account No. 40 on Exhibit No. 8 for sales account, as shown by the books and vouchers of the company from the date of its organization to September 1st, 1900?

Same objection by defendant; same ruling by master.

A. Sales account is a miscellaneous account, and has nothing to do with the cost of the plant; it merely assembles the sales of miscellaneous merchandise, gas fittings, stocks, etc. which are sold in the ordinary course of business of the company, and shows whether such sales were made at a profit or loss.

Q. Can you tell the amount expended by your company, under account No. 41. for store room, as shown by the books and vouchers of the company, from the date of its organization to the first day of September, 1900?

Same objection by defendant; same ruling by master.

A. The store room account, No. 41 was used for the purpose of assembling the cost of materials purchased, the materials which were purchased for account of the company, either for construction or operation are charged into this account and at the end of the month,
such materials as have been used either for purposes of con-
168 struction or operation are charged out of the account and credited to the store room account and are charged to the various construction or operating accounts under some one of the previous numbers upon the books of the company. The balance of the account at the close of each month shows the amount of material on hand belonging to the company which has been unused for any construction or operating purpose.

By the MASTER: Balance on hand under account No. 41.

A. Always shows the kind of the material we have on hand unused.

By the MASTER: Mr. Little, I would like to ask this question. Do the several amounts that you have given and charged to the several accounts from No. 1 to No. 38 inclusive make the total cost of the plant to September 1st, 1900, as stated by you, as shown by the books of the company?

A. Yes, they do; the figures which I have testified to $1342523.35 represents the total cost of the gas plant and gas property of the Peoria Gas & Electric Company at September 1st, 1900, excepting only unused materials on hand which were then in the store-room of the company, and which are not included in that figure.

Mr. RITSHER: Is that total arrived at by computing the sum of all the different accounts as they stood at May 1st, 1900 or as they stood at September 1st, 1900?

A. All operating accounts, that is to say, all accounts from No. 1 to No. 26 inclusive, were charged on May 1st, 1900 to the cost of the

property. After May 1st, 1900, and up to September 1st, 1900, these various operating accounts, being accounts numbered 1 to 26 inclusive, where no longer charged against the cost of the property, but were charged against the operations of the property, and the only charges made against the cost of the property from May 1st,
169 1900 to September 1st, 1900 were under general accounts numbers 32 to 38 inclusive.

Mr. RITSHER: Then, if I understand you right, the total cost of the construction of the gas plant of the Peoria Gas & Electric Company which you have given as $134,252.35 is arrived at by computing the sum of the various accounts from 1 to 26, both inclusive, as the same stood on May 1st, 1900, and also the sum of accounts 32 to 38 inclusive, as the same stood September 1st, 1900?

A. Yes sir.

By Mr. IRWIN:

Q. Mr Little, can you state the amount paid out by your company under account No. 1 for salaries of officers between the first day of May, 1900 and the 31st day of August, 1900, inclusive, as shown by the books and vouchers of the company?

By the MASTER: You have already got that, $2741.67.

Mr. IRWIN: I am just going into another account now; it will be a repetition only of one question. Please state the amount.

Objected to by defendant; same ruling by master.

A. $2741.67.

Q. Can you state the amount paid out by your company under account No. 1 for salaries to officers from the first day of May, 1900 to the 31st day of August, 1900, as charged to operating account?

Mr. MANSFIELD: Same objection.

Same ruling by master.

A. Yes.

Q. Please state the amount.

A. $2741.67 was paid for the salaries of officers during the period mentioned and charged to the operating expenses of the company.

Q. Can you state the amount paid out by your company under account No. 2 for accounting department between the first day of May, 1900 and the 31st day of August, 1900 inclusive, and charged to operating account as shown by the books and vouchers of the company?

170 Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state?

A. $1551.70.

Q. Can you state the amount paid out by the complainant company under account No. 3 for general office sundries between the first day of May, 1900 and the 31st day of August, 1900, inclusive,

and charged to operating expenses as shown by the books and vouchers of the company?

Same objection by defendant; same ruling by master.

A. Yes.
Q. Please state?
A. $1096.72.
Q. Can you state the amount paid out by your company on account No. 4 for canvassing between the first day of May, 1900 and the 31st day of August, 1900, inclusive, as shown by the books and vouchers of the company, and charged to operating expenses?

Same objection by defendant; same ruling by master.

A. Yes.
Q. Please state the amount?
A. $2655.55.
Q. Were all the items as paid out by your company on accounts from No. 1 to No. 26 inclusive between the first day of May, 1900 and the 31st day of August, 1900 charged to the operating expenses of the company?

Same objection; same ruling by master.

A. All the amounts paid out by the company during the period mentioned which I have testified as charged against accounts 1 to 31 inclusive were charged against the expenses of operating the plant and business of the complainant, during the period mentioned.

Mr. RITSHER: Can you state the amount paid out by your company under account No. 1 for salaries of officers betwe n September 1st, 1900 and August 31, 1901 and charged to operating ac-
171 count, as shown by the books and vouchers of the company?

Mr. MANSFIELD: That is objected to as incompetent and immaterial.

The MASTER: Admitted subject to objection.

A. Yes.
Q. Please state?
A. $3692.50.
Q. Can you state the amount paid out by your company under account No. 2, accounting department from September 1, 1900 to August 31, 1901 and charged to operating account as shown by the books and vouchers of the company?

Mr. MANSFIELD: Objected to as immaterial.

The MASTER: Answer subject to objection.

A. Yes.
Q. Please state?
A. 4090.60.
Q. Can you state the amount paid out by your company under account No. 3, general office sundries, from September 1, 1900 to

August 31, 1901, and charged to operating account, as shown by the books and vouchers of the company?

Mr. MANSFIELD: Objected to as immaterial and incompetent.
The MASTER: Answer subject to objection.

Q. Yes.
A. Yes.
Q. What is that amount?
A. 714.29.

Q. Can you state the amount paid out by your company under account No. 4 for canvassing from September 1, 1900 to August 31, 1901 and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.
Q. Please state the amount?
A. $2176.62.

Q. Can you state the amount paid out by your company under account No. 5 for insurance between September 1st, 1900 and
172 August 31, 1901 and charged to operating account, as shown by the books and vouchers of your company?

Mr. MANSFIELD: Same objection.
The MASTER: Same ruling.

A. Yes.
Q. Please state the amount?
A. $269.75.

Q. Can you state the amount paid out by your company under account No. 6 for rentals between September 1st, 1900 and August 31, 1901 inclusive and charged to operating account as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.
Q. Please state the amount?
A. $1184.

Q. Can you state the amount paid out by your company under account No. 7 for interest between September 1st, 1900 and August 31, 1901 inclusive and charged to operating account as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. No interest was charged against operating account during the period mentioned.

Q. Can you state the amount paid out by your company under account No. 8 for taxes between September 1st, 1900 and August 31, 1901 inclusive and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state the amount?

A. During the period mentioned, taxes upon the gas plant and gas property of the company were paid amounting to $2486.68. Of this sum, $828.88 was charged against operating accounts representing the *pro rata* share of the taxes of the year 1900. The
173 payment mentioned of $2486.68 was for the taxes of the *of the* year 1900. The taxes for the year 1901 have not yet been levied and no portion of the taxes for the year 1901 have been charged against operations on the books of the company from January 1, 1901 to August 31, 1901.

Q. Can you state the amount paid out by your company under account No. 9 for legal expenses, loss and damage between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state the amount?

A. $5190.10.

Q. Can you state the amount paid out by your company under account No. 10 for stationery, printing and postage between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state the amount?

A. Yes, $3093.30.

Q. Can you state the amount paid out by your company under account No. 11 for stable expenses between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state?

A. $1297.35.

Q. Can you state the amount paid out by your company under account No. 12 for discounts between September 1, 1900 and August 31 1901, inclusive, and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

174 A. I haven't the figures available at the present time.

Q. Will you procure them and bring them in?

A. Yes.

Q. Can you state the amount paid out by your company under account No. 13 for generator fuel between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. During period mentioned, no sums were paid for generator fuel.

Q. Can you state the amount paid out by your company under account No. 14 for coal between September 1 1900 and August 31, 1901, inclusive, and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state?

A. Value of the gas coal used and charged against operating account No. 14, gas coal during period mentioned was $15,141.67.

Q. Can you state the amount paid out by your company under account No. 15 for boiler fuel between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state?

A. The value of the boiler fuel used and charged against operating account No. 15 during the period mentioned was $1193.06.

Q. Can you state the amount paid by your company under account No. 16 for bench fuel between September 1, 1900 and August 31, 1901 inclusive, and charged to operating account, as shown by the books and vouchers of your company?

175 Same objection by defendant; same ruling by master.

A. Yes.

Q. State the amount?

A. During the period mentioned, the value of the bench fuel used and charged against operating account No. 16 was $3669.15.

By the MASTER: What does bench fuel mean, Mr. Little?

A. Fuel used to heat the benches of retorts.

Q. Can you state the amount paid out by your company under account No. 17, for manufacturing labor between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state?

A. $286.12.

Q. Can you state the amount paid out by your company under account No. 18 for manufacturing supplies between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes, value of the manufacturing supplies, both during the period mentioned and charged against operating account No. 18 was $535.10.

Q. Can you state the amount paid out by your company under account No. 19, for oil, between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. During the period mentioned, no oil of the kind contemplated by this account was purchased or used or charged against the account.

Q. Can you state the amount paid out by your company under account No. 20 for enrichers between September 1, 1900 and
176 August 31, 1901 inclusive, and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state?

A. The value of the enrichers during the period mentioned used and charged against operating account No. 20 was $694.30.

Q. Can you state the amount paid out by your company under account No. 21 for purification labor between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state?

A. $186.65.

Q. Can you state the amount paid out by your company under account No. 22 for purification supplies between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state?

A. $39.20.

Q. Can you state the amount paid out by your company under

account No. 23 distribution labor, between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state?

A. $1939.46.

Q. Can you state the amount paid out by your company under account No. 24 distribution supplies, between September 1,
177 1900 and August 31, 1901, inclusive, and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.

Q. Please state?

A. The value of the distribution supplies used d ..ag the period mentioned and charged against operating account No. 24 was $899.30.

Q. Can you state the amount paid out by your company under account No. 25 for street lamp operating between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account, as shown by the books and vouchers of your company?

A. During the period mentioned, no sums were expended on account of street lamp operating or any charge made against the account on the books of the company.

Q. Can you state the amount paid out by your company under account No. 26, miscellaneous supplies and expenses between September 1, 1900 and August 31, 1901, inclusive,. and charged to operating account, as shown by the books and vouchers of your company?

Objected to by defendant; same ruling by master.

A. Yes.

Q. Please state?

A. During the period mentioned the value of the miscellaneous supplies and expenses used and charged against operating account, No. 26 was $291.14.

Q. Can you state the amount paid out by your company under account No. 27, repairs and renewals of meters, between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account, as shown by the books and vouchers of your company?

Objected to by defendant; same ruling by master.

178 A. Yes.

Q. Please state?

A. During the period mentioned, the value of the material and labor used in repairing and renewing the meters was $226.93.

Q. Can you state the amount paid out by your company under account No. 28, repairs and renewals services, between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.
Q. Please state?
A. $64.81.
Q. Can you state the amount paid out by your company under account No. 29 bench repairs between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.
Q. Please state?
A. $72.51.
Q. Can you state the amount paid out by your company under account No. 30 gas house and machinery repairs between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.
Q. Please state?
A. $777.50.
Q. Can you state the amount paid out by your company under account No. 31, repairs and renewals mains between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. Yes.
179 Q. Please state?
A. $72.96.
Q. Can you state the amount paid out by your company under account Nos. 32 to 41 both inclusive between September 1, 1900 and August 31, 1901, inclusive, and charged to operating account, as shown by the books and vouchers of your company?

Same objection by defendant; same ruling by master.

A. I have not available at this time the ledger balances or other information as to the amount of those accounts as at August 31, 1901.
Q. You will bring those in?
A. Yes.
Q. Mr. Little, can you state the totals of the accounts 1 to 31 inclusive concerning which you have just testified covering your

operating expenses from September 1st, 1900 to August 31, 1901 as shown by the books and vouchers of the company?

A. Yes.

Same objection by defendant; same ruling by master.

Q. What is that total?

A. $60,257.25.

Q. Can you give the total of labor and the total of materials covering that period as shown by the books and vouchers of the company?

Same objection by defendant; same ruling by master.

A. Yes.

Q. What are those totals?

A. The labor amounts to $22,751.12 and the material to $37,506.13.

Q. Mr. Little, I will ask you to state the cost of the various constituent buildings with machinery in all the buildings going to make up the plant of the Peoria Gas & Electric Company as shown by the books and vouchers of the company, if you can so state?

Same objection by defendant; same ruling by master.

A. The retort house cost up to September 1, 1900, the sum of $8235.19; the purifying house was remodelled from a ware-house and the cost of such remodelling was $7009.69; the boiler
180 and pump house cost $2228.53; the meter house extension cost $1258.47; the office building, shop and store room cost in the original contract $4417.01 and including partitions, fittings, etc. the total cost was $4540.72; the barn on the premises which was there when we bought the property was remodelled at a cost of $34.50; the coal and coke shed No. 1 cost $7395. The fireproof brick operating floor in the retort house cost $2494.37; the cost of coal and coke shed No. 2 was $6626.01. The fence around the works cost $225.41 and the grading of the yard and works cost $289.10; the real estate cost $42,896.00.

Q. Can you state the machinery and equipments of the plant and the cost of the respective parts?

(Not answered.)

Whereupon an adjournment was taken to November 14, 1901, at 9:30 a. m.

181 Directors' room, Chicago National Bank building.

CHICAGO, ILL., THURSDAY, *November* 14, 1901—9:30 a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin and Mr. E. C. Ritsher appearing for complainant. Mr. Henry Mansfield appearing for defendant.

Direct examination of FRANCIS W. LITTLE resumed by Mr. IRWIN:

Q. Please give the constituent parts of the different apparatus and machinery necessary in the equipment of the plant and buildings of the complainant company for the manufacture and delivery of gas together with the cost of each particular part, equipment or apparatus, as placed and constructed in the buildings prior to September 1, 1900?

A. The gas manufacturing plant consists of 7 benches of 9 retorts each, which cost $22,108.73. The foundations upon which these benches were erected cost $1360.91; the freight elevator in the rettort house cost $889.45; the boilers, two in number, cost, including foundations and settings, $4631.89; the pumps which are used for pumping boiler feed water, water for the scrubbers, condensers and hydra-lic main, and for pumping tar and am-onia, and for operating the elevator and quenching coke, cost $1355.97; the ammonia concentrator which is located in the boiler room, cost $2165.98; the condensing and purifying apparatus, including the oxide elevator, cost $21,102.99; the foundations for the condensing and purifying apparatus, cost $1243.39; the steam piping in the purifying house, cost $1523.91; the station meter and governor cost $1749.40; the electric motor in the fitting shop and the electric wiring of the fitting shop and other buildings cost $824.71; the steel stack for the benches including the foundation on which it was erected, cost $1458.90; the boiler stack cost $685.19;

182 the fixing bench and vaporizer, located in boiler room, cost $2792.46; the water tank in the boiler room cost $169.90; the storage holder and foundation cost $30.839.48; the wagon scales cost $358.88 the minor scales cost $80; the railroad track scales cost $910.67; the brick tar tank cost $1614.39; the brick ammonia tank cost $1129.36; the steel oil tank in brick pit cost $865.33; the ammonia concentrate tank cost $346.25; the bar photometer cost $296.23; the laboratory cost $76.01; painting gas holder cost $198.78; the drainage sewer at works cost $774.78; the tool storage loft cost $140.78; the catch basins cost $81.92; the yard connections to the gas holder cost $406.66; the platform for coke storage cost $41.30; repairing plans and estimates of the work cost $174.06; leaving test holes under foundations cost $36.37 and erecting and operating a portable boiler during progress of construction cost $181.29. The above items represent a total of expenditures of

$105,615.70. The remainder of the charges to this account were for sundries, small expenses which were not charged to any one particular piece of apparatus.

Q. What was the actual cost of all the machinery and apparatus included in and about the plant for the manufacture and delivery of gas up to September 1, 1900, as shown by the books and vouchers of complainant company?

Mr. MANSFIELD: Is it a mere compilation of figures taken from the books of the company?

Ans. Yes sir;

Mr. MANSFIELD: Defendant objects to it as incompetent and not the best evidence under the stipulation, and moves the court to exclude it.

A. The total cost of the manufacturing plant of the Peoria Gas & Electric Company up to September 1, 1900, as shown by the books and vouchers of the company, was $107,480.15. I have testified in detail as to the cost of the various items going to make up
183 the sum of $105,615.70 of this amount. The remainder of the charges to this account, as shown by the books of the company, is made up of sundry small expenses which could not be charged to any one particular piece of apparatus.

Q. Can you give the size and length in feet of each gas main laid in and through the streets, alleys and highways of the city of Peoria, by the complainant company for the distribution of gas through the city of Peoria as of September 1, 1900?

Ans. Yes sir.

Q. Will you please give them in detail, giving each size with the length in feet, as shown by the books and vouchers of complainant company?

A. On September 1, 1900 there were:—1758 feet of 16 inch main 20,768 feet of 12 inch main; 3482 feet of 10 inch main; 20,229 feet of 8 inch main; 12,874 feet of 6 inch main; 80,852 feet of 4 inch main; 260 feet of 2 inch main; making a total of 140,223 feet of main pipe, amounting to 26 55/100 miles.

Q. Can you tell the total cost of the material, labor and other expenses entering into the purchase and laying of the gas main just mentioned, in and through the streets and highways of the city of Peoria, as shown by the books and vouchers of the company, as of September 1, 1900?

Ans. Yes, sir.

Q. Please state the total cost thereof?

A. The total cost of material and labor expended in the mains above referred to on September 1, 1900 was $120,081.15.

Q. Can you give the number and size of service pipes laid by the Peoria Gas & Electric Company from its mains into the premises of consumers in the city of Peoria up to September 1, 1900, as shown by the books and vouchers of the company?

Ans. Yes, sir.

Q. Please give them?

A. There were on September 1, 1900, three 3 inch service
184 pipes; two 2½ inch service pipes; 652—2 inch service pipes; 1503—1¼ inch service pipes, and 266—1 inch service pipes, making a total of 2426 service pipes on the date mentioned.

Q. Can you give the average length of each service pipe?

A. Yes sir;

Q. Please state it?

A. The 3 inch service pipes average 290 7/10 feet each; the 2½ inch service pipes average 187 feet each; the 2 inch service pipes average 57 1/10 feet each; the 1¼ inch service pipes average 74 feet each, and the 1 inch service pipes average 110 feet each.

Q. Can you give the total cost of all the service pipes laid by complainant company from its mains in the city of Peoria into the premises of consumers for the purpose of delivery of gas up to September 1, 1900, as shown by the books and vouchers of the company?

A. Yes sir;

Q. Please state the detailed cost thereof?

Ans. $38,575.94.

Q. Referring to the various amounts which you have testified were paid out by the complainant company and entered under the various accounts, will you please state whether each and all of the amounts, or totals named by you, are true totals, as shown by the books and vouchers of the company?

Ans. Yes sir; they are.

Q. Please state whether the amounts and totals testified to by you represent and show all the actual expenditures made by the Peoria Gas & Electric Company in and about the construction and operation of the gas plant of said company from the time of its organization up to September 1, 1901?

A. They represent all of the expenditures in and about the construction of the plant up to September 1, 1900, and the expenditures in the operation of the plant up to September 1, 1901.

Q. State whether or not the vouchers, duplicate vouchers and sub-vouchers showing all of said expenditures in detail, are
185 present in court subject to examination and inspection by the special commissioner and counsel for the parties?

Ans. They are.

Q. State whether or not all of the expenditures, concerning which you have testified, were made solely in and about the construction and operation of the gas plant of the complainant in the city of Peoria?

A. They were, except as to such vouchers and items which I have specifically stated in my examination were for electric accts.

Q. In your examination with reference to the vouchers offered and read in evidence you stated that several of the vouchers were for pay-rolls and the vouchers did not show for themselves to which particular accounts they were charged, will you please explain how

those pay rolls were charged, and if the proper portion thereof has been included in the totals to which you have testified as being proper charges against the gas plant of complainant?

A. The classification of the various charges for labor, as shown by the pay-rolls, is made upon the face and back of the pay-roll itself, and the number of the voucher is endorsed upon the pay-roll, for the purpose of identification and verification. The charge on the books of the company is made from the pay roll itself and each charge made was a proper charge. The proper proportion of each pay-roll has been included in the details to which I have testified.

Q. Were all of the expenditures and amounts, as testified to by you, necessary and proper expenditures in and about the construction, completion and operation of the gas plant of the complainant in the city of Peoria during the period named?

Ans. Yes, sir.

Q. Were all of such charges and expenditures reasonable and at the fair market price for the material and labor entering into the construction, completion and operation of the gas plant of the complainant at the respective times and periods the same were expended?

186 Objected to as immaterial, incompetent and calling for a conclusion.

A. Yes, sir.

Mr. IRWIN: Now, if the master please, we desire to reserve the right for Mr. Little to make any corrections of any errors which may appear in his testimony when the same is transcribed, or make any explanation which may be necessary when the evidence is written out and we may possibly want to ask him an additional question or two concerning the matter. With that reservation we turn the witness over for cross-examination.

Cross-interrogatories by Mr. MANSFIELD:

1. State, if you know, when the Peoples Gas & Electric Company was organized?

Ans. It was in March or April 1899.

2. The name of the company was afterwards changed, was it?

A. Yes sir; it was afterwards changed to the Peoria Gas & Electric Company.

3. Was the Peoples' Gas & Electric Company organized when they obtained their franchise and license from the city of Peoria?

A. Yes sir;

4. Were you the manager of that company at that time?

Ans. No.

5. How long after that date did you become the manager of the company?

A. My recollection is it was in the latter part of April 1899; the exact day I do not now recollect.

6. The Peoria Gas & Electric Company at the present time is operating, not only a gas plant, but an electric plant also, in the city of Peoria, is it not?

Ans. Yes sir;

7. And you are manager of both branches of the business of that company, are you not?

Ans. Yes sir;

8. Was any part of your salary up to May 1, 1900, charged
187 to the electric branch of the business of complainant company?

Ans. No.

9. Was any part of the salary of any of the officers and accountants of complainant company previous to May 1, 1900, charged to the electric accounts of that company?

A. No part of the salaries of the officers was charged to the electric branch of the business prior to May 1, 1900. The salary of the superintendent and bookkeeper of the electric department of the business and the wages of all operatives engaged in the electric part of the business, was charged to electric accounts.

10. When did complainant company buy the plant then known as the General Electric Company in the city of Peoria?

A. In June 1900.

11. Did you ever make an investigation of that plant previous to that time?

A. I do not quite understand what you mean. I was inside of the plant for the first time in June 1900. I saw the books of the company for the first time in June 1900.

12. Did you as manager of the Peoria Gas & Electric Company, carry on any negotiations for the purchase of that plant previous to May 1, 1900?

Objected to as immaterial, incompetent, not cross-examination.

A. No sir;

13. Did anybody in the employ of the Peoria Gas & Electric Company, or any of the officers of that company, investigate that plant previous to May 1, 1900?

Objected to same grounds as before.

The MASTER: I suppose you are calling for his personal knowledge of that, Mr. Mansfield?

Mr. MANSFIELD: Yes sir;

The MASTER: The witness may answer, subject to the objection, if he knows.

188 A. Not to my knowledge.

14. Who made, or entered into negotiations for the purchase of the real estate in the city of Peoria now owned by complainant company, which appears upon the books of complainant company and charged as "plant" on Exhibit "2"?

Objected to same grounds as before stated.

A. I did.

15. From whom was that property purchased?

Objected to same grounds as before.

A. The property which appears charged to that account was purchased as follows:—The fee title of the first piece was purchased of C. C. & C. D. Clarke, and the lease thereon, held by the Distilling & Cattle Feeding Company, was purchased from John McNulta, receiver. The second piece of property was purchased from Philip Zell, and the third piece from the Woodruff Ice Company.

16. Have you the deeds to this property in your possession or in the possession of complainant company?

Objected to same ground.

A. The deeds are in the hands of the treasurer of the company

17. Can you and will you produce those deeds?

Ans. Yes sir;

Defendant's counsel offers in evidence the three deeds referred to by the witness and reads the following portions thereof, viz:—

1. A deed dated June 10, 1899, from Charles C. Clarke *et al.*, to the Peoples' Gas & Electric Company conveying the following described property, to-wit:—part of lot 1, in the sub-division of school section 16, township 8, north of range 8, east of the 4th, principal meridian. A part of the southwest fractional quarter of section 9, township 8, north of range 8, east of the 4th, principal meridian, more particularly bounded and described as follows:—to-wit:—Commencing at a point on the southeasterly line of Grove street, 20 feet southwesterly from the most westerly corner of lot 6, block 70, in Bal-
189 lances' addition to the town, now city of Peoria, being the northwesterly corner of the Peoria Gas Light & Coke Company's land; thence, at right angles with Grove street along the said Peoria Gas Light & Coke Company's land to the Illinois river; thence southwesterly along the Illinois river to a stake, which is the termination of the line dividing lots 1 & 2 in said sub-division of school section 16; thence northwesterly along said dividing line to the southeasterly line of Grove street; thence northeasterly along said line of Grove street 215 feet to the place of beginning. Also lots 25, 26, 27, 28, 29, 30, 31, 32, 33, & 34, in Charles C. Clarke and Chauncey D. Clarke's resurvey of Little's sub-division of lot 2, in school section 16, aforesaid; except, however, the rights of way of the Peoria & Springfield Railroad Company and the Peoria Terminal Railway Co., over and across the same. Said premises situate, lying and being in the city of Peoria, county of Peoria and State of Illinois.

Signed by Chas. C. Clarke *et al.*, and recorded in the recorder's office of Peoria county, Ill., on June 28, 1899, Book "YH" of Deeds, p. 100.

2. A deed dated June 24, 1899, from John McNulta, receiver of the Distilling & Cattle Feeding Company, to Chas. C. Clarke *et al.*, for the leasehold interest etc., in the same property. Recorded in recorder's office of Peoria county, Illinois, in Book "ZH" p. 78.

3. A deed dated November 15, 1899, from Philip Zell to People's Gas & Electric Company conveying lot No. 6, in St. John's subdivision of lots No. 3 and No. 4, in school section 16, township 8, north of range 8, east of the 4th, principal meridian, except the right of way of the Peoria Terminal Railway Company across said lot; said lot situate, lying and being in the city of Peoria, county of Peoria and State of Illinois. Filed for record in recorder's office of Peoria county, Illinois, on November 28, 1899, and recorded in Book "YH" p. 350.

4. A deed dated November 15, 1899, from Woodruff Ice Company to the Peoples' Gas & Electric Company, conveying lots Nos. 1,
190 3, 4, & 5, in St. John's sub-division of lots Nos. 3 & 4, in school section 16, township 8, north range 8, east of the 4th, principal meridian, excepting, however, the right of way of the Peoria Terminal Railway Company across said lots; situate, lying and being in the city of Peoria, county of Peoria and State of Illinois. Recorded in Book "ZN" p. 213, in recorder's office, Peoria county, Illinois.

18. How much of this property is now occupied by buildings of the Peoria Gas & Electric Company*s?*

A. The main piece of property purchased from the Clarkes is enclosed by a fence and all of the principal buildings of the company are located on it. The property purchased from the Woodruff Ice Company and Philip Zell is used for storage purposes.

19. Do you know the area of ground covered by those buildings?

A. The plat Exhibit "1" introduced in evidence gives the size of the ground and the size of each building.

20. Look at plat marked Exhibit "1" and tell me what the area of that ground is as shown on said plat?

A. The piece purchased from Clarke Bros., is 315 9/10 feet on the river side; 335 9/10 on the Rye Street side; 339 9/10 feet on the Grove Street side, and 276 3/10 on the remaining side.

21. Where is the piece of property purchased from the Woodruff Ice Company located with reference to the property purchased from Clarke Bros.?

A. It is down the river from the Clarkes a distance of 85 feet.

22. What is the size of that property?

A. The Woodruff Ice Company's property and the Zell property together contain 4 lots each 27½ feet frontage and extend from St. Johns street down to the river bank less the right of way of the Peoria Terminal Railway Co.

23. Is the right of way of the Peoria Terminal Ry. Co., excluded or included in the deed from the Clarkes?

191 A. It is excluded, if I remember correctly; the deed shows.

24. How much did the complainant company pay for the property purchased from the Clarkes?

A. We paid to the Clarkes $33.000 and to the Distilling & Cattle Feeding Company $3.000.

25. How much did you pay to the Woodruff Ice Company for the four lots purchased from them?

A. We bought three lots from that company for $4500, and we bought one lot from Philip Zell for $1700 or $1750; I have forgotten which.

26. Look at voucher No. 614 and state the amounts of money that were paid under that voucher and to whom they were paid and for what purpose?

A. Under voucher No. 614 $3000 was paid to John McNulta, receiver of the Distilling & Cattle Feeding Company, for a release of the rights of that company; $33.500 was paid to C. C. & C. D. Clarke, and $4500 was paid to the Woodruff Ice Company.

27. Do those items represent the expenditures for all property owned by the Peoria Gas & Electric Company in the city of Peoria on the 1st, day of May 1900?

A. They do excepting revenue stamps, surveyor's charges for surveying the lots, the necessary abstracts of title and the expense of removing the buildings which were on the lots when we bought them and which were not necessary for our business, including also, the check of $1700 or $1750. given to Philip Zell for the purchase of one lot from him.

28. Then the deeds that have been offered in evidence are not all the deeds relating to property owned by the Peoria Gas & Electric Company in the city of Peoria on May 1, 1900?

A. Yes sir; they are. They represent the Clarke property,
192 the Zell property and the Woodruff Ice Company property, which was the only real estate, according to my recollection, which the company owned at that date. The voucher does not represent the total payments on the property; it covers the Clarke and Woodruff Ice Co., property but not the Zell property or the abstracts etc.

29. In what item of expenditure, as shown upon voucher No. 614, is the purchase price that complainant company paid for the Zell lot included?

A. The price paid for the Zell lot is not included in voucher No. 614; that is included in another voucher.

30. Is the description of the lot purchased from Philip Zell in any of the deeds that have been offered in evidence?

Ans. Yes sir.

31. What buildings were upon this property when it was purchased by the Peoria Gas & Electric Company?

A. The Clarke property contained the buildings known as the Clarke distillery; it included a complete set of distillery buildings.

32. Was there a warehouse upon that property?

A. Yes, a large warehouse.

33. To whom was that warehouse sold?

A. The warehouse was not sold.

34. What buildings were sold that were on that property?

A. The main manufacturing buildings, that is to say, the main distillery building was sold to Mr. Finkelstein.

35. Was not the warehouse sold to a man named Bushnell in the city of Peoria?

A. No, sir. Wait a moment. The small warehouse, according to my recollection now, was torn down by ourselves, but possibly it was torn down by Bushnell; I have forgotten who wrecked it; we at first contemplated using it as a retort house, but found on investigation it would not do for that purpose and we wrecked
193 it and put a new retort house in its place.

36. If Bushnell paid the Peoria Gas & Electric Company $400 for that building you know nothing about it?

Ans. No.

37. Would that item show upon the books of the company?

A. Yes.

38. Can you by an examination of the books of the company find out whether any item of that kind was received from Mr. Bushnell?

A. Yes sir.

39. Will you do so?

Ans. Yes sir.

40. What amount of money did the Peoria Gas & Electric Company receive from Mr. Finkelstein for the old distillery building?

A. My recollection is it was $500.

41. Is that item shown upon the books of your company?

A. Yes sir.

42. Will you examine the books and find out upon what page such item is entered and let us know?

Ans. Yes sir.

43. All of this property testified to by you as being owned by the Peoria Gas & Electric Company, is still owned by it, is it?

A. Yes sir.

(The MASTER:)

44. Has the electrical company you have testified *to* operated in the city of Peoria an independent plant, I mean independent of the premises you have testified concerning?

A. The electrical plant of the complainant company is situated on another block some distance away from the gas plant of the company.

(The SAME:)

45. Is it in any way connected physically with the gas plant of the complainant company?

Ans. No sir; It is run and operated as an entire different business from the gas business, merging only in the office of the company.

(Mr. MANSFIELD:)

46. Are you the same F. W. Little who scheduled the property of the Peoria Gas & Electric Company on the 26th day of April
194 1901, for the purpose of taxation?

Ans. Yes, sir.

47. Look at the paper now shown you and state whether or not that is a correct copy of the schedule filed by you as of date the day therein shown?

Objected to as incompetent, immaterial, not cross-examination.

A. I am unable to state from recollection that this is a correct copy, I think, however, it is substantially correct.

48. That paper is sworn to, is it not?

Ans. It appears to be.

49. It was sworn to by you at that time, was it not?

A. I don't remember about that—oh, I do now remember it was not sworn to; it was signed and mailed to the assessor.

50. In that statement you valued the steam engines, including the boilers of the gas plant of complainant company at $76,500, did you not?

Objected to as incompetent, immaterial, not cross-examination, and because there is nothing to show this paper is a true copy of the statement that was filed.

A. No, I did not.

51. Did you at that time in your written statement value the carriages and wagons of the Peoria Gas & Electric Co., at $450.00?

Objected to as incompetent, immaterial, not cross-examination.

A. I think they were valued at about that sum.

52. Did you in the schedule so filed by you value the manufacturing tools, implements and machinery, other than engines and boilers, of the Peoria Gas & Electric Co., at $120,000?

Objected to same grounds as before and also because the question assumes the statement was filed.

A. No, I did not.

53. Did you in the written schedule so filed by you value the household or office furniture of the Peoria Gas & Electric Co., at $1000?

195 Objected to as immaterial, incompetent, not cross-examination and assuming there was such a schedule filed.

A. I cannot now remember in the absence of a true and correct copy of the schedule filed as to the amounts which were inserted in that schedule.

54. Do you know whether the paper now shown you is or not a true and correct copy of the schedule filed by you?

Objected to as incompetent because the witness has already said he didn't know whether it was or not.

A. I do not know that this schedule shown me is a correct copy of the schedule filed by me, nor do I know it is not a correct copy.

55. Did you in that schedule place the total valuation of the plant, including an item of $45,000 for material and manufactured articles on hand, at $245,400.00?

Objected to as incompetent, immaterial, not cross-examination.

A. I was advised by our attorneys, that in valuing property for the purpose of taxation—Interrupted——

Mr. MANSFIELD: I object to the answer as not responsive.

The MASTER: I have no power to control the manner in which the answers of the witness shall be given, but I think the witness should answer the question yes or no and then make any explanation he desires.

A. In the absence of a true and correct copy of the schedule as filed I am unable to state.

56. Do you remember the day that schedule was filed?

A. No, I do not.

57. Was it signed by you or did you sign the name of the complainant company to that schedule?

Objected to as incompetent and immaterial and because no particular schedule has been shown the witness signed by anybody.

196 A. I signed a schedule as vice president of the Peoria Gas & Electric Co., but I don't know whether the paper you have presented to me is a true and correct copy of that schedule or not.

58. Look at the instrument I now show you and state on what day it purports to be signed and sworn to by you?

Objected to as incompetent, irrelevant, immaterial, not cross-examination and assuming it is a copy and asking about a paper nobody has seen or examined and not offered in evidence.

Mr. MANSFIELD: Before I get through I will show you what the paper is.

A. The paper appears to have been sworn to on April 26, 1901.

Defendant's counsel offers in evidence the instrument shown the witness for the purpose of connecting the evidence which will be hereafter offered with the instrument itself. Said instrument is marked by the master Exhibit "10" and is in the words and figures following, to-wit:

Objected to by complainant as irrelevant, immaterial and not the best evidence.

(Here follows schedule of personal property marked p. 196½.)

AUDITOR'S FORM NO. 1. Nixon Printing Co. Printers, Peoria

SEE ASSESSOR'S NOTICE ON BACK OF THIS SHEET.

Before commencing to fill out this Schedule, read carefully the INSTRUCTIONS TO PERSONS LISTING, and the EXTRACTS from the REVENUE LAW printed on the reverse side of this sheet.

A schedule of the numbers, amounts, quantity and quality of all personal property in the possession under the control of ..... *belonging to* Peoria Gas and Electric Company .....

on the first day of April, 1904, as listed by ..... *of the Town of* Peoria .....
in the County of Peoria, and State of Illinois.

Town ..... *School District* ..... *T* ..... *R* ..... *Village or City of* .....

To be Filled by Person or Persons Required to List Personal Property.			Schedule No.	4	5	6
1 No.	2 Full Fair Cash Value	3 Quality and Quantity, Description, Memoranda as to Quality, Face Value, etc.		ITEMS OF PROPERTY	Full Value (as determined by Assessor)	Assessed Value (Fixed by Assessor)
9	450		1	Horses of all ages	450	90
			2	Cattle of all ages		
			3	Mules and Asses of all ages		
			4	Sheep of all ages		
			5	Hogs of all ages		
	76500		6	Steam Engines, including Boilers	76500	15300
			7	Fire and Burglar-proof Safes		

			3	Mules and Asses of all ages		
			4	Sheep of all ages		
			5	Hogs of all ages		
	76500		6	Steam Engines, including Boilers	76500	15300
			7	Fire and Burglar-proof Safes		
			8	Billiard, Pigeon-hole, Bagatelle or other similar tables		
10	450		9	Carriages and Wagons of whatsoever kind	450	90
			10	Watches and Clocks		
			11	Sewing and Knitting Machines		
			12	Piano-Fortes		
			13	Melodeons and Organs		
		Yearly Gross Income, $	14	Franchises		
		Yearly Gross Income, $	15	Annuities and Royalties		
			16	Patent Rights		
			17	Steamboats, Sailing Vessels, Wharf Boats, Barges or other Water Craft		
			18	Merchandise on hand		
	45000		19	Material and Manufactured Articles on hand	45000	9000
	120000		20	Manufacturers' Tools, Implements and Machinery (other than Engines and Boilers which are listed as such)	120000	24000
			21	Agricultural Tools, Implements and Machinery		
			22	Gold and Silver Plate and Plated Ware		
			23	Diamonds and Jewelry		
		Being the Net Amount as per Special Statement	24	Moneys of Bank, Banker, Broker or Stock Jobber		
		Being the Net Amount as per Special Statement	25	Credits of Bank, Banker, Broker or Stock Jobber		
	2000		26	Moneys of other than Bank, Banker, Broker or Stock Jobber	2000	400
		Being the Net Amount as per Special Statement	27	Credits of other than Bank, Banker, Broker or Stock Jobber		
		Face Value being $	28	Bonds and Stocks		
		Face Value being $	29	Shares of Capital Stock of Companies and Associations not incorporated by the Laws of the State		
		Being amount as per Affidavit	30	Pawnbrokers' Property		
			31	Property of Companies and Corporations other than hereinbefore enumerated		
			32	Bridge Property		
			33	Property of Saloons and Eating Houses		
	1000		34	Household or Office Furniture and Property	1000	200
			35	Investments in Real Estate and Imp. thereon (see Sec. 10)		
			36	Grain on hand		
			37	Shares of Stock of State and National Banks		
			38	All other Personal Property required to be listed		
		Dogs	39			
				Totals	$	$

I do solemnly swear that the foregoing is a full, complete and correct schedule of all the personal property subject to taxation in the county, town, city, village and school district above mentioned, owned by me, or controlled by me as agent for _____ on the first day of April, A. D. 1904 and which I am by law required to list; that the numbers, quantity, quality and amount of each item so listed are correctly stated; that the values of the several items of property, as by me stated in column No. 2, are the full fair cash values of the same, as I verily believe; that I have stated the full amount of my moneys and of my credits (less deductions authorized by law), and that I have correctly stated the full fair cash values and the face values of all bonds, stocks and shares of capital stock in companies or associations not incorporated by the laws of this State by me owned or controlled.

Peoria Gas and Electric Company
by F.W.Little, Vice-Prest

Remarks: _____

(See Sec. 20, Act Approved Feb. 25, 1898.)

Subscribed and sworn to before me this 26th day of April 1904

J. G. Janssen Assessor.

F. N. D.

19612

It is the duty of the Assessor, so far as possible, to question the person listing, and personally view the property.

SCHEDULE OF

Personal Property

OWNED OR CONTROLLED BY

FOR THE YEAR 190

Town.....

School District.....

Village or City.....

ASSESSOR'S NOTICE.

(See Sec. 17, Act Approved Feb. 25, 1898.)

To.....

.....

This Schedule must be filed out, sworn to and returned to me, in person or by mail, at.....

.....

on or before .....

You are to give a full fair cash value of the articles mentioned, as well as the amount of money required to be returned. Only one-fifth of the several amounts will be taken and assessed for the purpose of taxation.

.....

Assessor.

NOTE—This Schedule is to be filed with the Board of Assessors or Supervisor of Assessments, and shall be preserved for at least two years.

(See Sec. 28, Act approved Feb. 25, 1898.)

Part of Section 17 of "An Act for the Assessment of Property, and to Provide the Means Therefor, to Repeal a Certain Act Named Therein." Approved February 25th, 1898.

"And every person required to list personal property or money shall fill out, subscribe and swear to, and return to the Assessor, in person or by mail, at the time required, such schedule in accordance with law, giving the numbers, amount, quantity and quality of all the articles enumerated in said schedule by him possessed or under his control, required to be listed by him for taxation. The assessor shall determine and fix the fair cash value of all items of personal property, including all grain on hand, on the first day of April, and set down the same, as well as the amounts of notes, accounts, bonds and moneys, in column headed 'full value,' and ascertain and assess the same at one-fifth part thereof, and set down said one-fifth part thereof in a column headed 'assessed value,' which last amount shall be the assessed value thereof, for all purposes of taxation. The assessor or some person authorized by law to administer an oath, shall administer the oath required in this section."

Suggestions and Instructions to Persons Listing Personal Property.

If you own personal property liable to taxation in more than one town or school district (except property in hands of agents, and to be listed by them), make separate schedules of such property, according to location.

If you have property liable to tax within the limits of an incorporated village or city, state in schedule the name of such village or city; and if you have, also, personal property liable to tax lying outside such limits, make a separate schedule thereof, even if it be in the same school district.

Be especially careful to state correctly the school district in which you are liable to tax.

If you own live stock or other personal property connected with a farm not situated in the town or school district in which you reside, make separate schedule of said property as of the town and district in which said farm is situated. If, as administrator, guardian, trustee, agent, etc., you are required to list property in behalf of others, make a separate schedule of such property

Be careful to append, in the space for this purpose provided, such description of each item listed as will enable the assessor to fix its fair cash value.

Exhibit 10
I.C. Pinkney, Master

197 59. In Exhibit "3" offered in evidence by complainant you add to the figures therein shown an item for depreciation of the plant amounting to $9,178.44—upon what do you base that depreciation?

A. I assume that the average yearly depreciation on the plant would be at the rate of 6½ % per annum on its cost exclusive of the real estate.

(The MASTER:)

60. On what hypothesis or knowledge do you make that assumption?

A. From my experience in the business and general acquaintance with the depreciation of gas plants.

(Mr. MANSFIELD:)

61. Does that item represent 6½ % of the total cost of the plant?

A. Approximately; I think it is exactly 6½ % but it may vary, perhaps, one or two hundredths of one per cent.

62. That is exclusive of the cost of the real estate?

A. Yes sir. My recollections is that that statement referred to is for depreciation for the period of four months and in that event the depreciation is calculated on the basis of the depreciation for the entire year and these four months are charged with one third of the total yearly depreciation.

63. And that represents a depreciation of 6½ per cent. for four months on the total valuation of the plant $434,252.35 excluding the cost of the real estate?

A. From the cost of the plant, as shown, $434,252.35, was deducted the cost of the real estate and the depreciation is at the rate of 6½ % per annum for a period of four months.

(The MASTER:)

64. Is that depreciation figured on a cost of operating?

Ans. No sir.

(Mr. MANSFIELD:)

198 65. Is this item shown on Exhibit "2" as charged to the salary of officers included in the amount on which you calculate the 6½ per cent. depreciation?

A. The salary of the officers during the period of construction was included as a part of the cost of the plant and the depreciation was figured on that—the total cost.

66. Was the amount of money shown on Exhibit "2" and thereon charged to accounting department of $6549.46 included in that amount upon which you calculate the depreciation at 6½ %?

A. Yes sir, in the same manner as the salaries of officers.

(The MASTER:)

67. Did I understand you to say on direct examination that the

salaries of officers, after the plant was put in operation, was charged to operating expenses?

A. Yes sir, and prior to that date they were charged to the cost of the property.

(Mr. MANSFIELD:)

68. Were all the items of expenditures, as shown on Exhibit "2" down to and including account No. 26 taken to make the sum total upon which you calculate the depreciation of this plant at the rate of 6½ per cent.?

A. All of the expenditures represented by accounts Nos. 1 to 26 inclusive made prior to May 1st, 1900, were charged to the cost of the property and depreciation is figured on the entire cost less the real estate.

69. What rate of interest would you consider a fair remuneration to the stockholders of the Peoria Gas & Electric Co. on the amount of money you have testified to as being invested there and which goes to make up the cost of that plant?

A. 10 % would be a fair return to the stockholders if a sufficient allowance had been made to cover depreciation and maintenance of the plant.

70. What if any depreciation would occur on the amount
199 of money the Peoria Gas & Electric Co. had paid for officers' salaries previous to May 1st, 1900?

A. We built this plant ourselves and instead of pro rating these general expenses over various constructions we preferred to keep them separate; those expenditures are necessary and proper part of the cost of the plant and if they had been added in percentages to each individual piece of apparatus, would have made the legitimate cost of that apparatus; the apparatus with that additional amount, added to cover officers' salaries, accounting and administration, etc., would have then been stated at a greater sum than is stated in the accounts as the cost of the property and would then have been subject to depreciation on its legitimate cost just as it is now, therefore, it is proper management to add a depreciation to all officers' salaries, or other general expenses incident to the administration and proper accounting of the business up to the date when the plant went into operation.

Defendant's counsel objects to the foregoing answer as not responsive and moves the court to exclude it.

71. What depreciation, if any, would occur in the amount of money that was paid by the Peoria Gas & Electric Co. on account of the accounting department?

A. For the reasons given in my answer to the last preceding question, I think this is a proper expenditure against which to charge a depreciation.

72. What depreciation would there be, if any, in the amount that

was paid by the Peoria Gas & Electric Co. for interest previous to May 1st, 1900?

A. I consider interest during the progress of construction as a legitimate element of cost and subject to the same depreciation as any other portion of the company's property.

200 73. You have testified that the buildings were situated on the property that was obtained by the Peoria Gas & Electric Co., from the Clarke's, have you not?

A. Yes sir; the main buildings; there is a small building on the Woodruff Ice Co., property.

74. How many feet of ground have you in the property the complainant company obtained from the Woodruff Ice Co.,?

A. There are three lots, each 27½ feet front by 150 feet deep; the riparian rights added to that makes the total depth of the lot about 275 feet subject to the right of way of the Peoria Terminal Railway Co.,

75. Are any buildings of the complainant company upon the property purchased from Philip Zell?

Ans. No.

76. Where is that property located with reference to the property obtained by complainant company from the Woodruff Ice Co.,?

A. It is about 85 feet away from it.

77. Are they in one body or separate?

A. The Zell and Woodruff lots lie together in one body, and Rye street, which is a 30 foot street is between them and the property obtained from the Clarke's.

78. Is Rye street still open to public traffic?

A. The tressle of the Peoria Terminal Ry. practically blockades the street near the river; otherwise it is open so far as I know

79. Is the piece of property that complainant company obtained from the Woodruff Ice Company, and the Philip Zell piece of property, used by the company in the transaction or carrying on of their business of manufacturing gas in the city of Peoria?

A. It is used for storage purposes.

80. For what storage?

A. Principally of pipes and special pipe fittings.

81. Is all of the company's property, known as the Clarke

201 property, covered with buildings?

Ans. Not entirely.

82. Is there sufficient ground there unoccupied for the storage of pipes and other material you have referred to?

A. Not as a general proposition; at the present time we have a relatively small amount of pipe on hand and there is probably room enough for such an amount of pipe as we have now, but not for the usual stock we carry.

83. Look at Exhibit "2" and state what depreciation there is in all of the accounts from No. 1 to No. 25 inclusive, on account of the operation or construction of complainant's plant?

A. Accounts 1 to 25 inclusive, represent expenditures necessary

in the construction of the plant and putting it into operating condition; they increase the investment by the extent shown and therefore, in my judgment, are properly subject to depreciation, the same as any other element of cost.

84. Look at account No. 36, as shown on Exhibit "2," and state what is meant by "new services."

A. I mean the service pipes running from the street mains of the company into the buildings, houses, stores etc., of consumers. It is the pipe which conveys the gas from the main to the consumers' meter.

85. The plant of the Peoria Gas & Electric Co. is located at the foot of Persimmon St., is it not?

Ans. Yes, sir.

86. What is the size of the main running up Persimmon St.?

A. 16 inches.

87. What is the size of the main running down Washington St.?

A. I think we have no main on Washington St.; we have a 12 inch main in the alley between Adams and Washington streets.

88. Have you not a main running down Washington St. to Cass St.?

Ans. I think not; I have no recollection that our mains run on Washington St. On the contrary, I have quite a clear recol-
202 lection we have not. In fact, we have no main on Washington St., from Persimmon St. to Cass St.

89. Have you a main on S. Adams St., from Persimmon?

Ans. Yes.

90. How far does that main extend?

Ans. 3620 feet.

91. What is the size of that main?

Ans. 12 inch.

92. How many service pipes connect with that main on that street, if you know?

Ans. I don't know.

93. Have you any information in your possession from which you could state—I mean on May 1, 1900?

A. I have in my office in Peoria.

94. Will you get that information for me?

Ans. Yes, sir.

95. Have you a plat, or anything in your possession, which shows the service pipes running from your mains on all of the streets in the city of Peoria?

A. Yes, we have in the office at Peoria a plat book in which the mains are divided up into lengths of a thousand feet. That plat book shows the mains and the services running off of each main at the point where it leaves the main which is correct up to date; to ascertain just what services were put in prior to May 1, 1900, would require an examination of the original entries concerning those services to determine the date when they were put in; that record is kept up at all times.

96. Will you make an examination of that matter on your return to Peoria and compile a statement as to the services that were put in previous to May 1, 1900, and attach the same as a part of your answer to this question?

A. I can prepare such a statement but it will take time.

Mr. IRWIN: I object to the question as too indefinite and call upon counsel for defendant to state exactly what he wants furnished.

97. Are all of the service pipes that the Peoria Gas & Electric Co., put in previous to May 1, 1900, in use now for the purpose
203 *pose* of distributing gas to the people into whose premises the service pipe runs?

A. Not all of them are in use at the present time.

98. Have they been in use since you run them into the premises?

A. The great majority of them have.

99. Did the People's Gas & Electric Co., have an electric plant in the city of Peoria previous to November 15, 1899?

Objected to as incompetent, immaterial not cross-examination.

A. At the time mentioned the company was installing an electric plant in the power house of the P. & P. Terminal Ry., at Bartonville, and were putting in pole lines and wires for the distribution of electricity in the city of Peoria.

100. Did you have anything to do with the management of the electric branch of the business of the Peoria Gas & Electric Co.?

Objected to same grounds.

A. Very little; that was almost entirely in charge of P. A. Bertrand, superintendent.

101. Account No. 10 on Exhibit "2" represents the expenditures made by complainant company for stationary, printing and postage, does it not?

Ans. Yes sir.

102. Does the "printing" there have reference to notices printed in the daily papers in the city of Peoria?

Ans. No sir.

103. Under what account would such notices be charged?

A. Under account No. 4, canvassing.

104. Look at the answer filed in this case October 10, 1900, and state whether or not the notice, a copy of which is contained in the answer on page 8, was ever published in a newspaper in the city of Peoria, and if so, designate to what account it was charged?

Objected to as incompetent, immaterial, irrelevant, not cross-examination and assuming it is a copy set out in the answer; also because there are two notices appearing on that page of the answer
204 and the question does not designate which notice is referred to.

105. It is the notice purporting to be signed by the Peoria Gas & Electric Company?

Complainant objects to the question for the further reason that there is no proof that any such notice was signed by the Peoria Gas & Electric Company. And further, because the answer shows that the alleged notice, if published, was published long prior to the time of the examination of this witness.

A. A notice, similar in terms to the notice which appears in the answer signed by the Peoria Gas & Electric Co., was published in the newspapers of Peoria sometime in July or August 1900, and the bills for such publication were charged to account No. 4, "canvassing."

106. Was that notice, or one similar in terms, published in the Peoria newspapers under your directions?

Ans. Yes sir.

107. What was the price charged per thousand cubic feet of gas by the complainant company between May 1, 1900, and September 1, 1900?

Objected to as incompetent, immaterial, irrelevant and not cross-examination.

A. From about May 1, 1900, up to August 1, 1900, the price charged by the Peoria Gas & Electric Co., net, was about 30c. per thousand cubic feet; the 30c. rate was made somewhere along about the 1st, of May 1900, the exact date I don't remember.

108. What was the price charged per thousand cubic feet for gas sold by the complainant company from May 1, 1900 to Sept. 1, 1900?

Objected to same grounds as before.

A. The lowest general price was 30c. per thousand cubic feet; two consumers, viz:—the court house and the post office and custom house, received their gas for 25c. per thousand cubic feet.

109. What was the price charged for gas per thousand cubic feet by the complainant company during the period from May 1, 1900, to September 1, 1900, when the gas was used by the consumer
205 for fuel purposes?

Objected to same grounds as before.

A. Various prices were charged during the period from the commencement of operations by the plant up to August 1, 1900; during the greater portion of that period the price was 30c. per thousand cubic feet for gas for any and all purposes. On August 1st., the price was fixed at $1.15 net for light, and 75c. net for fuel purposes.

110. What price is now being charged by complainant company per thousand cubic feet for gas sold to consumers for fuel purposes?

Objected to as incompetent, irrelevant, immaterial, not cross-examination and not pertaining to the issue.

A. The present price charged is $1.00 per thousand cubic feet net

for gas used for any purpose in case the bill is paid on or before the 10th, day of the month in which it is due; if not paid within that period the price is $1.15 per thousand cubic feet.

111. When was the price changed?

Objected to as incompetent, immaterial, not cross-examination.

A. The price was last changed on November 1, 1901.

112. What had been the price from September 1, 1901, up to November 1, 1901, for fuel gas and illuminating gas?

Objected to same grounds as before.

A. $1.15 net for light and 75c. for fuel, provided the bills were paid on or before the 10th, day of the month in which they became due; if not so paid, the price was $1.25 for light and 85c. for fuel.

113. On your direct examination you testified, among other items contained in account No. 1, with reference to a bill paid the Central Electric Company for incandescent lights, electric shades, electric call bells and 65 feet of weather-proof wire. For what
206 purpose were those articles used?

A. I don't recollect that I testified that the items in question were charged to account No. 1; I think I testified that they were charged to account No. 3, general office sundries; the items in question were used in fitting up the office of the complainant company at No. 211 Main St., between Washington and Adams streets in Peoria.

114. Did you at any time while in that office use the electric light?

A. Yes sir; during nearly all the time we were in the office we used the electric light. In fact, during all the time. We did not open the office at No. 420 Main St., until we were ready to sell gas.

115. The gas plant of complainant company had not yet been completed at the time the articles named were purchased?

Ans. No.

116. You have testified that at the present time there is a process of manufacturing gas by which the cost of the manufacture of the gas is greatly reduced—was that process discovered at the time of the erection of the plant of complainant company in the city of Peoria, Illinois?

A. It was hardly in the nature of a discovery. An experimental plant was being erected in or near Boston, Mass., at that time and another experimental plant, using a slightly different type of apparatus, was being erected and put in operation at McKeesport, Pa., outside of those two places I don't know of any place in the United States where such a plant had then been operated.

117. It had been in pretty general use, however, in Germany and England, had it not?

Ans. Yes, quite generally used.

118. For how long had that process been generally used in Germany and England?

A. You could not say it had been generally used for any considerable period of time; I refer now to what is known as the
207 by-product oven process, and presume that is the process to which you refer. The principal point of that process is the character of the coke made and whether or not a metallurgical coke, that is to say, coke suitable for foundries and blast furnaces, could be made in such an oven with a saving, at the same time, of gas of sufficiently good quality to permit it to be sold for illuminating purposes. There are many opponents of the system to-day in both England and Germany, and it is hardly correct to say it is in general use as yet in either country.

119. Then you desire to modify the statement you made on direct examination, that it has come into general use in Germany?

A. I wish to explain the use of the word; it is coming into general use and its use if becoming more and more a matter of approval by gas engineers generally, both here and abroad.

120. What are the by-products obtained by complainant company from the manufacture of gas in the city of Peoria?

A. Coke, coal tar, ammonia and a very small amount of retort carbon.

121. What is the object of the use of oxide of iron in complainant's plant at Peoria?

A. To purify the gas from sulphuretted hydrogen.

122. What is the chemical change that occurs upon the introduction of the oxide of iron?

A. The oxide of iron has an affinity for the sulphuretted hydrogen in the gas and withdraws it from the gas.

123. What is the chemical compound produced when the sulphur in the gas combines with the oxide of iron?

A. If I went into that fully I would have to go into chemistry and go into it very deeply; there are several re-actions that will take place there.

124. Well, state one of the reactions?

208 A. The oxide of iron is a ferric oxide; the sulphur is decomposed and unites with the ferric oxide—the exact chemical symbal for which I have now forgotten.

125*a*. Is the product resulting from that chemical combination of any value in the market?

A. Not in ordinary gas works for the reason that the recovery of it is too expensive; in very large gas works some cyanogen could be recovered which would have a commercial value.

126. Has any natural gas been discovered in or around Peoria?

A. Yes, I have understood so.

127. Are you testifying to that from personal knowledge or from mere hearsay?

A. No, I have seen indications myself over in Tazewell county just across the Illinois river from Peoria.

128. What kind of gas is that?

Ans. I never analyzed it.

129. Do you know whether it is marsh gas or what kind of gas it is?

Ans. No sir; I do not.

130. How long have you lived in the city of Peoria?

A. I have lived there since about April 1899.

131. How long have you been acquainted with the city of Peoria?

A. I have been about Peoria more or less for a good many years; my first visit there was about 20 years ago; I was there again for sometime about 6 or 8 years ago and I have been about Peoria almost continuously since the early spring of 1899.

132. At the time you were there 20 years ago did you hear about the natural gas said to have been discovered across the river from Peoria?

Objected to as immaterial, incompetent, not cross-examination.

A. No.

133. If there was such an agitation at that time did you know anything about it?

Ans. No.

209 134. You stated on direct examination that a company had been formed for the purpose of developing the natural gas properties near Peoria, did you not?

A. I understand there has; I have seen such a statement in the newspapers.

135. Have you any stock in that company?

Ans. No sir;

136. All you know then about the company being formed to develope natural gas properties near Peoria is from what you have read in the newspapers?

A. No it is not; I have seen what might be considered indications of natural gas and have seen coming out of the ground a substance which I believe is natural gas.

137. You say you have seen it coming up out of the ground?

A. Yes sir; I have seen it bubbling up through the water at a marshy point and the appearance indicated natural gas.

138. How long has the electric street car system been established in the city of Peoria, if you know?

A. I don't know, but it has been there at least 7 years to my knowledge.

139. Have you noticed any disintegration resulting to your pipes in the city of Peoria from the action of electricity upon them?

A. I have found a few instances of it.

140. What was the condition of the pipes you saw?

A. We found two service pipes with holes eaten through them.

141. Do you know whether or not that was caused by the action of electricity?

A. I believe it was electrolytic action which did it.

142. Having knowledge of the great saving in the cost of manufacturing gas by the process known as the by-product oven process

when the complainant company built its plant in the city of Peoria, why did you not use that process?

210 A. Because to put in a plant of sufficient size to supply the city of Peoria with gas from the by-product oven process, would have required an investment of upwards of a million dollars for the plant alone; and further, because it had not yet been demonstrated that the coals which were available for gas making purposes in this country would produce a quality of coke for which we could find a market. In other words, it was too risky under American conditions, and particularly the conditions existing in Peoria.

143. Where does the complainant company buy its coal from which it manufactures gas?

A. It buys it as a rule in Chicago, but it is Youghiogheny coal from the Youghiogheny regions in Pennsylvania.

144. Through whom, in the city of Chicago, do you purchase that coal?

(Objected to as immaterial.)

A. The Daniels Coal & Coke Company.

145. Do you know of your own knowledge that the coal you purchase for manufacturing gas from comes from the district in Pennsylvania mentioned by you?

A. I have seen some of the coal unloaded from barges at Cincinnati and loaded into cars which I afterwards saw in our yards at Peoria; further than that I have no personal knowledge that it is Youghiogheny coal.

146. What is the peculiarity about that coal which makes it better for the manufacture of gas than any coal found around the city of Peoria?

A. It has a greater yield of gas and a better quality of coke, more tar and more ammonia.

147. What is the cost per ton of that coal at the present time laid down at Peoria?

(Objected to as immaterial.)

A. $2.80 per net ton for what is known as re-screened or barge coal, and $2.85 for what is known as 1¼ inch screened or all rail coal.

211 148. What is the cost per ton of coal of a similar description as to size found around the city of Peoria?

Objected to as incompetent and immaterial.

A. I don't know of any such coal around Peoria.

149. What is the price of coal, of like size as the coal designated by you, taken from the Illinois coalfields in Peoria at the present time?

(Objected to as incompetent and immaterial.)

A. It ranges in price from $1.55 to $2.20 per ton.

150. Is there any market for the coal tar manufactured by complainant company in the city of Peoria?

Objected to as immaterial and not cross-examination.

A. I know of but one person or firm in Peoria which ever buys coal tar; we have a contract with them for the sale of our tar to them and they are now behind nearly 60,000 gals. in the quantity which they agreed to take, but have not taken because they say they cannot use it.

151. What is this coal tar used for?

A. Roofing, felt, creosote oils and pitch; it is often further worked up into many different drugs and chemicals.

152. Is there any market for the sale of coke in Peoria?

A. Generally a very good market.

153. Is there any market in Peoria for the sale of the ammonia by-products?

Ans. None that I know of.

154. Where do you sell those?

A. We sell our ammonia to the Michigan ammonia works at Detroit.

155. Did you make out a statement for the Peoria Gas & Electric Co., as required by sec. 32, of an act of the legislature of the State of Illinois, entitled, "An act for the assessment of property and the levy and collection of taxes"?

A. I do not identify it by that description.

212 156. Made this year before the board of equalization of the State of Illinois?

Objected to as incompetent, irrelevant, not cross-examination.

A. There was such a statement made and signed by me, I think, but I have forgotten whether I actually made it out or not.

157. What was the valuation, if you remember, that you placed upon the real estate owned by complainant company at the time of filing said statement?

Objected to as incompetent, immaterial, not cross-examination, irrelevant to the issue, not the best evidence and because not confined to the property of the gas company.

A. The assessed valuation.

158. What was that assessed valuation?

Ans. I don't remember.

159. Do you know about what it was?

Ans. No, I could not say.

160. Did the complainant company own any other real property in the city of Peoria, other than the property deeded to it by the Clerke's, Philip Zell and the Woodruff Ice Company, at the time of making said statement?

(Objected to as immaterial)

A. Yes, sir;

161. What other real property did it own?

Objected to as immaterial, not cross-examination, not pertinent to the issue.

A. The land on which the electric light station is located at the foot of Liberty street in Peoria.

162. Do you know the number of square feet contained in that piece of property on which the electric light plant is located?

Objected to as incompetent, immaterial, not cross-examination.

A. No I do not.

163. That property at the foot of Liberty St., fronts on what is known as Water St., does it not?

Objected to as incompetent, immaterial, not cross-examina-
213 tion, not pertinent to the issue.

A. Yes, sir.

164. What is the frontage of that property on Water St., if you know?

(Objected to same grounds as before)

A. I don't remember.

165. What is the frontage on Liberty St., if you know?

Objected to same grounds.

A. I don't remember.

166. When did the complainant company buy that property at the foot of Liberty St., fronting on Water St.?

Objected to same grounds.

A. I don't remember the date but it was in the fall of 1900, or spring of 1901; my recollection now is it was about February 1901.

167. When was the Peoples' Gas & Electric Co., organized?

A. In March, 1899, I think.

168. What was the capital stock of that company at that time?

Objected to as immaterial.

A. The authorized capital stock was $500.000.00.

169. Was that stock on May 1, 1900, fully paid up?

Objected to as immaterial, irrelevant, not cross-examination.

A. No.

170. When was it fully paid up?

Objected to same grounds.

A. $100.000, or 20% of the capital stock, was paid in 1899; the

remainder of the capital stock was paid up in the summer of 1900—the exact date I don't remember.

171. Was that capital stock fully paid up before you commenced to operate the plant?

A. No sir; it was not paid up until after we got into operation. You asked me this morning, Mr. Mansfield, to obtain some informa-
214 tion for you with reference to the sale of the warehouse on *on* the gas company's property to Bushnell; I find on looking into it that $200 was received from Bushnell for that warehouse on June 29, 1899 and credited to plant account.

I also find that the distillery buildings which were on the property were sold to Finkelstein, and some material in the way of brick and iron beams etc., which went into the plant were taken from him in pay, and in addition he paid us $122.10, which was credited to plant account.

172. Look at Exhibit "7" and state, if you know, by what process the gas was manufactured in New York city designated on the exhibit as No. 1?

A. That is principally water gas; a relatively small proportion of the gas made by that company is coal gas.

173. Is that the process used by all of the gas companies designated in Exhibit "7" as doing business in New York city?

A. I think the 1st, and 5th, companies are the only ones there which make any coal gas.

174. You don't know what proportion of coal gas——Interrupted—

A. No it varies.

175. Is this a mixed gas?

A. It is either a water gas or a mixed gas.

176. Look at the same exhibit and state what process is used in the manufacture of gas in Chicago, Ills., designated on the exhibit as No. 1?

Ans. Water gas.

177. Look at the same exhibit and state what kind of gas is manufactured in Chicago, Ill., designated as No. 2?

Ans. Water gas.

178. What kind of gas is manufactured in Buffalo, N. Y., under No. 1?

A. Mixed gas.

179. What kind of gas is manufactured in San Francisco, Cal., under No. 1, No. 2 and No. 3?

A. No. 1 makes a mixture of coal and water gas; No. 2
215 and No. 3, I think, make only water gas.

180. Look at the same exhibit and state whether or not coal gas is manufactured in any of the cities shown on that exhibit? If so, what ones?

A. Yes sir; in Cincinnati, O. at Cleveland, O. they make almost wholly coal gas; both have water gas machinery, but I have never known them to run them; New Orleans makes almost entirely—is entirely coal gas; Milwaukee makes a considerable quantity of

coal gas; Louisville makes almost wholly coal gas, that is, company No. 1; Minneapolis makes a large proportion of coal gas; Providence makes nearly all coal gas; so also does Indianapolis; Kansas City makes a proportion of coal gas; Toledo, O. makes a large proportion of coal gas. Nearly every gas company has as an auxiliary a water gas machine and at some portion of the year during a time of wide flux-ation of the output of gas they are apt to take care of the fluctuations by water gas; while they may make nearly all coal gas during the greater portion of the year, in the dark days of November, December and January, it is frequently necessary for them to start up their water gas machine to make gas quick enough to supply the demand.

181. Has the complainant company a water gas machine?

A. No sir;

(Mr. RITSHER:)

182. Have you named all the cities now?

A. I do not see any other cities in the exhibit—well, Erie, Pa., I think, makes their entire output of coal gas—makes no water gas whatever.

(Mr. MANSFIELD:)

183. You testified on direct examination that it was not practicable to deliver gas to consumers of a quality of the uniform 18 candle power at the place of consumption—why is that so?

A. Because the candle power will vary according to the pressure on the gas and the temperature through which it passes after leaving the works; and also, according to the sufficiency or insuf-
216 ficiency of the piping within the premises of the consumer; and further, because of the variety of burners which are used by consumers.

184. Louisville is a city much larger than Peoria, is it not?

A. Yes sir.

185. I believe you state they manufacture coal gas there?

A. Yes, almost exclusively in the principal works.

186. What is the candle power of the gas manufactured at Louisville?

Ans. About 18 candle.

187. What is the candle power at that city as shown upon Exhibit "7"?

A. The candle power of the 1st, company is not stated; of the 2nd., company it is stated as 18.

188. Why would it not be practicable to manufacture a coal gas of 21 candle power at the plant of the complainant company at Peoria?

A. Such a gas would be very smoky and would be too expensive as the cost of enriching from 17 or 18 candles up to 20 or 21 candles would be excessive, and would not give satisfaction to the consumers.

189. Does the increase in the candle power of necessity make a smoky gas?

A. If made of coal gas, or if the candle power is brought up by rich hydro-carbons of any sort.

190. Then it is the enriching of the gas which causes the gas to smoke?

A. Yes sir; but water gas of that candle power, or a mixed coal and water gas of 21 or 22 candle power would not smoke.

191. When you enrich coal gas what is used for the purpose of enriching it?

A. We use cannel coal as a general rule; sometimes we enrich with the fixing bench using naphtha; our general practice, however, is to use cannel coal for enriching.

217 192. Would it be practicable to make a 21 candle power gas from coal enriched with naphtha, or cannel coal?

A. Such a gas could be made but it would not be satisfactory to the consumer.

193. You have testified that the making of coal gas is a continuous process—do you manufacture gas at complainant's plant at Peoria at all times?

A. Yes sir; we never expect that plant to shut down from this time on.

194. Is there any difference in the quality of the gas furnished by your company between the gas used for fuel and illuminating purposes?

(Objected to as immaterial.)

A. No.

Adjourned by agreement until Friday, November 15, 1901, at 9:30 a. m.

Directors' room, National Bank building.

CHICAGO, ILL., *November* 15, 1901—9:30 a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T Irwin and Mr. E. C. Ritsher appearing for complainant. Mr. Henry Mansfield appearing for defendant.

Cross-examination of FRANCIS W. LITTLE resumed by Mr. MANSFIELD:

195. Are all the gas mains laid by the Peoria Gas & Electric Company located within the city of Peoria?

A. They are now.

196. Complainant company has no gas mains then in the village of Averyville?

Ans. No, it has not.

197. Has complainant any mains in Richwoods township beyond the intersection of Wilcox avenue and Knoxville avenue?

218 A. No, I think not.

198. If there are any pipes located outside the city of Peoria belonging to the complainant company are they included in the summary you have testified to in this case?

A. Yes sir; I have given the total main milage and included it all in the cost of the property.

199. Do any of the mains of your company connect with the mains of the Peoria Gas Light & Coke Co., in the city of Peoria?

Objected to as incompetent, immaterial, irrelevant and not cross-examination.

A. No, sir.

200. Do you furnish gas to any consumer in the city of Peoria through mains sold to your company by the Peoria Gas Light & Coke Co., or rented by your company from said company?

Mr. IRWIN: Complainant objects to the question on the same grounds as before and I want to give you notice Mr. Mansfield if you are going to try and pry into the property affairs of this company that I will instruct the witness not to answer. We have no objection to your asking anything about the cost of gas, or the cost of the plant or anything that tends to prove the issues in this case.

Mr. MANSFIELD: I am trying to find out whether there is any combination with reference to the price of gas or cost of that plant. If there is anything that would limit the cost there I have a right to find it out; it is not my purpose to go into the private affairs of the company.

Mr. IRWIN: You have no right to go back of the time of the commencement of this suit at any rate, and no time is fixed in your question.

A. I have no knowledge or recollection of any such case and do not think we furnish gas to any consumer through mains purchased or leased from the Peoria Gas Light & Coke Company.

219 201. Does the Peoria Gas Light & Coke Co., furnish gas to any consumer in the city of Peoria through mains owned by the Peoria Gas & Electric Company?

Mr. IRWIN: Complainant objects to the question as incompetent, immaterial, irrelevant and not cross-examination and I instruct the witness not to answer unless the question is limited to September 1, 1901, the date at which any proof has been offered as to the cost of the manufacture and sale of gas.

Mr. MANSFIELD: Confine your answer, Mr. Little, to that limitation.

The WITNESS: Not to my knowledge.

202. What is the character of the plant of the Peoria Gas & Elec-

tric Company as to being a modern plant and well-equipped for the purpose of making gas in and about the city of Peoria?

A. It is thoroughly modern and well-adapted to the purpose.

203. Were the different parts of the plant so installed by the Peoria Gas & Electric Company, the best known by gas experts at the time said gas plant was installed, taking into consideration the location of the plant?

Ans. I think so.

204. At the time of the installation of this plant did you make estimates for the construction of its various parts?

Ans. Yes.

205. Do you remember what estimate you placed upon the making and installing of the purifying and condensing apparatus attached to that plant?

Ans. I could not remember now.

206. Would the books of your company show what that estimate was?

Ans. No, I think not.

207. In your working orders reported to the general officers of the company at Chicago, didn't you put an estimate of the work that was to be done under that order?

A. Yes, sir; there was an estimate made on the working order.

208. Are those working orders here?

Ans. I think so.

220 209. Have you the working order showing the estimate you made for the construction and installing of the purifying and condensing apparatus?

A. My recollection now is that there were two or three working orders gotten out in connection with the installation of the purifying and condensing plant; it was divided up into 2 or 3 working orders.

210. Can you obtain that information from the working orders?

A. Yes sir.

211. Will you do so?

Ans. Yes sir.

212. Have you an estimate of the cost made by you of the installing of the 7 benches and one storage holder of the plant of complainant company?

A. I have not got it with me but it is over at the other office and I will produce it for you.

213. You testified on direct examination that the Peoria Gas & Electric Company had expended the sum of $1903.33 for general office sundries. Was any part of that sum charged to the electric branch of the Peoria Gas & Electric Company?

A. The expenditure of $1903.33 as shown on Exhibit "2" and testified to by me, was for general office sundries of the gas department only; the items belonging under that classification to the electric department were charged in the electric accounts.

214. Was there, up to Sept. 1, 1900, any items charged to the

electric branch of complainants company's business, for general office sundries?

A. Yes sir; but such items do not appear on Exhibit "2."

215. You testified on direct examination, as shown on Exhibit "2" that the amount expended by the Peoria Gas & Electric Company for the salaries of officers amounted to $7740.90. Was there any money expended by the complainant company for sal-
221 aries of officers up to September 1, 1900, and charged to the electric branch of complainant company's business?

(Objected to as immaterial).

A. Yes sir.

216. When did the complainant company commence to charge such expenses to the electric branch of the company?

Objected to as immaterial.

A. When the officers and employés began to devote any attention to the electric branch of the business the time given to the electric branch was charged to that branch.

217. About what time was that?

A. In the summer of 1900; we commenced first on the gas plant and later on the electric plant.

218. When did the Peoria Gas & Electric Company purchase the electric plant now owned by it?

(Objected to as immaterial).

A. The plant of the Peoria General Electric Company was bought by the Peoria Gas & Electric Company either in the late fall or winter of 1900, or the spring of 1901; my recollection is that the purchase was made about the month of February 1901.

219. Then the officers and employés of the Peoria Gas & Electric Company were not paid any money that was charged to the electric branch of the company until the time of the purchase, or immediately before the purchase, of this electric plant?

A. No sir, that is not the case. I testified yesterday that the Peoria Gas & Electric Company commenced the construction of distributing lines in the summer of 1900, operating them from the plant located in the power house of the Peoria & Pekin Terminal Ry., at Bartonville.

220. You testified on direct examination that the amount of money expended by the Peoria Gas & Electric Co., for stable expenses was $2200.52, as shown on Exhibit "2." Were any items charged by complainant company to the electric branch of that company
222 for a similar expense prior to September 1, 1900?

Objected to as immaterial, irrelevant, not cross-examination.

A. The stable expenses for the electric department were charged in the same manner as to the gas department.

221. How much gas was manufactured by the Peoria Gas & Electric Company from May 1, 1900 to August 31, 1900?

A. From the date when the plant started to August 31, 1900, the plant made 18,942,213 cubic feet of gas.

222. You have testified that the gas sold consumers during the same period was 15,475,200 cubic feet—what became of the balance of that gas so manufactured?

A. It was used at the office and works and donated and lost by leakage.

223. How much gas was in the holder of the Peoria Gas & Electric Company on the morning of Sept mber 1, 1900?

A. I could not tell you that now without reference to the books and records of the company at Peoria.

224. Will you produce that record showing the amount of gas on hand at that time?

Ans. I wil- have to get it at Peoria.

225. The amount of residuals as testified to by you and shown on Exhibit "3," as the product from 18,942,213 cubic feet of gas, is not the by-product from the manufacture of the 15,475,200 cubic feet is it?

Ans. Yes sir.

226. How much gas was manufactured by the Peoria Gas & Electric Company during the year ending August 31, 1901?

Ans. 55,215,078 feet.

227. The residuals as testified to by you and shown on Exhibit "6" are the by-product result from the manufacture of 55,215,078 cubic feet then instead of 51,475,200 cubic feet?

Ans. Yes sir.

228. What became of the balance of the gas manufactured by complainant company during that period and which is not accountd for in your statement Exhibit "6"?

223 A. It was used at the office and works of the company, donated and lost by leakage from the street mains and services.

229. How many feet of gas was manufactured by the Peoria Gas & Electric Company in the month of April 1900?

A. I don't now recollect.

230. Can you find out the amount of gas that was manufactured by the Peoria Gas & Electric Company in monthly periods from the time the company commenced operations down to September 1, 1901?

A. Yes, I can get that information from the records of the company in Peoria; I have not got it here.

231. Will you do so and make such statement a part of your answer to this interrogatory?

A. Yes sir;

Said statement was subsequently produced by the witness in the words and figures following, to-wit:—

224 232. Can you ascertain the amount and value of the residuals obtained from the manufacture of gas for the same time and furnish it in monthly statements?

A. Yes sir.

233. Will you do so and make that statement a part of your answer to this interrogatory?

A. Yes sir;

Said statement was subsequently furnished by the witness and is in the words and figures following, to-wit:—

225 234. Can you determine the cost of coal used by the complainant company for the same period in the manufacture of coal gas and furnish the same in monthly periods?

Ans. Yes sir;

235. Will you do so and make such statement a part of your answer to this interrogatory?

A. Yes sir.

Said statement was subsequently furnished by the witness and is in the words and figures following, to-wit:—

226 236. Do you know the monthly cost of the bench fuel used by complainant company, the cost of the boiler fuel, the cost of manufacturing supplies, the cost of purification supplies, the cost of enrichers, the cost of repairing apparatus, for the same period?

A. No I do not.

237. Can you obtain that information from the books of your company?

Ans. Yes sir;

238. Will you do so and make such statement a part of your answer to this interrogatory?

A. I will do so.

The witness subsequently furnished said statement which said statement is in the words and figures following to-wit:—

227 240. Can you now give the total monthly cost of all material used by the complainant company during the period from May 1, 1900 to September 1, 1901; also the total monthly cost of manufacturing labor for same period; the monthly cost of purification labor for same period; the monthly cost of the labor for repair of the apparatus for same period; the monthly labor cost same period; the monthly value of the coke as manufactured in your storeroom same period; the monthly value of the tar manufactured in your storeroom same period; a monthly statement as to what price was received for the coal tar manufactured by complainant company during same period; the total monthly value of the ammonia obtained from the manufacture of gas during same period; the monthly value of the by-products obtained by complainant company from the manufacture of gas during same period; the monthly gross cost of gas during same period; the monthly net cost of gas

during same period and the monthly labor cost of gas per thousand cubic feet during the same period?

A. I cannot.

241. Can you obtain that information from the books of the Peoria Gas & Electric Company?

Ans. Yes sir;

242. Will you do so and make such statement a part of your answer to this interrogatory?

Ans. Yes sir;

The witness subsequently furnished the statement called for which said statement is in the words and figures following, to-wit:—

228 243. How many retorts were in use by the Peoria Gas & Electric Company during that same period of time per month?

A. I cannot tell now.

244. Can you obtain that information by an inspection of the books of your company?

Ans. Yes sir;

245. Will you make such an inspection of your books and make such information a part of your answer to this interrogatory?

A. Yes sir;

The witness subsequently furnished the information called for with reference to retorts in the words and figures following, to-wit:

246. Can you give the amount of gas made per month per retort during the same period of time?

Ans. No I cannot.

247. Can you obtain that information by an inspection of your books?

Ans. Yes sir;

248. Will you do so and make such information a part of your answer to this question?

Ans. Yes sir;

The witness subsequently furnished the information asked for in the words and figures following, to-wit:—

229 249. Can you give the amount of gas made per pound of coal used per month during the period from May 1, 1900 to Sept. 1, 1901?

A. No I cannot.

250. Can you obtain that information from an inspection of the books of complainant company?

Ans. Yes sir;

251. Will you do so and make such information a part of your answer to this interrogatory?

Ans. Yes sir;

The witness subsequently furnished such information in the words and figures following, to-wit:—

230 252. What fuel does the Peoria Gas & Electric Company use for the purpose of heating its benches?

Ans. Coke.

253. Where does the company get that coke?

A. Make it ourselves.

254. What per cent. of the coke that is manufactured per month by complainant's plant is used for fuel under the benches?

A. The amount used from September 1, 1900 to September 1, 1901, was $23\frac{3}{10}$ per cent.

255. What per cent. per month was so used during the same period?

A. I cannot tell you; it varies slightly from month to month.

256. Can you obtain such information from an inspection of the books of complainant company?

Ans. Yes sir.

257. Will you do so and make such information a part of your answer to this interrogatory?

Ans. Yes sir.

258. Can you give the amount of tar made per month measured in gallons during the same period?

Ans. No I cannot.

259. Can you obtain that information from an inspection of the books of complainant company?

Ans. Yes sir.

260. Will you do so and make such information a part of your answer to this interrogatory?

A. I will. I can give you all of that information for the first four months, period ending August 31, 1900, and for the next year now, but if you want it in monthly statements I will have to examine the records of the company at Peoria to obtain it.

261. I prefer it in monthly statements?

Ans. Very well.

231 262. Can you state the technical name of the gas coal used by the Peoria Gas & Electric Company in its furnaces?

A. We do not use gas coal in our furnaces.

263. Can you state the technical name of the gas coal used by complainant company for making gas?

A. We use 2nd, pool, Youghiogheny coal. We tried some Illinois coal and found we could not use it, abandoned its use and are using only Youghiogheny coal.

264. When did you abandon the use of Illinois coal?

A. In the summer of 1900.

265. Have you used any other gas coal?

A. Yes, we used a small amount of West Virginia coal and a little Kentucky coal.

266. What coal do you use for the purpose of enrichers?

A. Cannel coal.

267. What was the cost of the boiler fuel used by the Peoria Gas & Electric Company during the period from May 1, 1900, to August 31, 1901?

Ans. $1284.30.

268. Is there any connection between the holder of the Peoria Gas & Electric Co., and the works of the Peoria Gas Light & Coke Co. in the city of Peoria?

Mr. IRWIN: I object to the question as incompetent, immaterial, irrelevant and not cross-examination, and instruct the witness to refuse to answer.

A. Under the advice of counsel I refuse to answer.

269. Did the Peoria Gas & Electric Company expend any money between the 20th, day of October and the 1st, day of November 1901, in the laying of a gas main between the holder of the Peoria Gas & Electric Company and the works of the Peoria Gas Light & Coke Co.?

Mr. IRWIN: Complainant objects to the question for the same reasons heretofore given; also because it has nothing to do
232 with the cost of the plant during the period concerning which proof has been offered, and I instruct the witness to refuse to answer.

Mr. MANSFIELD: I do not see any use of my going on and asking questions if I am not to receive answers to the questions.

Mr. IRWIN: You have your remedy. If you think you have any legal right to compel him to answer we will go before the court with you at any time.

A. Under the advise of counsel I refuse to answer.

(The MASTER:)

270. Have you personal knowledge of the matters inquired of in the last two interrogatories, Mr. Little?

Mr. IRWIN: I object to that as immaterial. The witness may have personal knowledge of a good many things that are not proper in this inquiry; it is not a question whether he knows it or not but whether he ought to answer the question—whether it is competent or not, and I instruct the witness to refuse to answer.

(Mr. MANSFIELD:)

271. What was the daily average manufacture of gas previous to October 20, 1901, by the complainant company?

Objected to as incompetent, immaterial, irrelevant, not cross-examination, and because it has nothing to do with the cost of gas during the period for which proof has been offered.

The MASTER: I think the inquiry ought to be limited to Sept. 1, 1901, the time fixed in the examination-in-chief.

272. How much gas was manufactured by the Peoria Gas & Electric Co., up to November 1, 1901?

Objected to same grounds as before.

The MASTER: Do you think it material, Mr. Mansfield, on cross-examination to go into these matters subsequent to Sept. 1, 1901?

Mr. MANSFIELD: Yes sir; I think so.

Mr. IRWIN: I dislike very much to instruct the witness not to answer questions, but I do not propose to permit a lot of matter to go into the record that is incompetent, not cross-examination
233 and concerning which the witness was not inquired about on direct examination; and, if the counsel for defendant wants to go into any matters of that character he should do so on his defense and make this witness, or any other witness, his own witness for that purpose so that he will be bound by the answers of the witness. If the master will not rule on this question we will be compelled to instruct the witness not to answer.

The MASTER: The master is with counsel for complainant in reference to the competency of this evidence, but counsel is aware of the fact that the master has no power to rule on the competency of evidence. I can only suggest to counsel for defendant that this is a matter of defence, unless he limits his inquiry within the time covered by the direct examination of the witness.

(Mr. MANSFIELD:)

273. Has the Peoria Gas & Electric Co., laid a main on South Adams St., in the city of Peoria?

The MASTER: You went over that yesterday and the witness said it had and gave the number of feet as 3620 feet.

274. Is that main laid on S. Adams St., between Cedar and South streets in the city of Peoria?

A. My recollection is that the pipe runs from the intersection of Adams and Persimmon streets in a southwesterly direction 3620 feet down Adams street.

275. Was there any arrangement by and between complainant company and the Peoria Gas Light & Coke Co., for the furnishing of gas to consumers from Cedar street to South St., on Adams St., in the city of Peoria, at any time previous to September 1, 1901?

A. I have no recollection of any such an arrangement.

276. Would you know if such an arrangement had been made?

A. Probably.

277. Can you ascertain if such an arrangement has been made from an inspection of the books of the Peoria Gas & Electric Co.?

234 A. I presume I could; I would like to have you, however, state exactly what you mean by "an arrangement"; that is rather an indefinite word and I would like to have you definite about it.

278. Will you examine the books of your company and see whether or not any arrangement or agreement has been made by your company with the Peoria Gas Light & Coke Co., for the furnishing of gas to consumers on S. Adams St., in the city of Peoria, between Cedar St., and South St., previous to September 1, 1901?

Objected to as incompetent and immaterial because it certainly don't tend to show the cost of the manufacture of gas, nor tend to show the cost of the plant, and those are the only questions at issue in this case.

A. I will do so.

279. If, upon an examination of your books, you find that an arrangement or agreement has been made by and between the complainant company and the Peoria Gas Light & Coke Co., for the furnishing of gas to consumers on S. Adams St., between Cedar and South streets prior to September 1, 1901, will you prepare a statement of said arrangement or agreement so you can be further interrogated with respect thereto?

Objected to as incompetent, immaterial, irrelevant, not cross-examination, and calling for evidence which would be incompetent immaterial and irrelevant in this case.

The MASTER: The witness may answer subject to the objection and subject to the further objection of counsel to the statement asked for when produced.

A. I will examine the books of the company and ascertain and state what they show, if anything, concerning the matter asked for.

280. Has the quantity of gas manufactured anything to do with the cost of the production of the gas?

(Objected to as immaterial.)

A. Yes sir; it has a good many things to do with it.

235 (The MASTER:)

281. What is the possible daily output of complainant's plant in Peoria?

A. 500.000 to 650.000 cubic feet.

(The SAME:)

282. Of 18 candle power gas?

Ans. Yes sir;

(Mr. MANSFIELD:)

283. What was the average candle power of the gas manufactured by complainant company from April 1, 1900, to Sept. 1, 1901?

Ans. Slightly over 18 candle power.

284. What was the average candle power per month of the gas manufactured by the Peoria Gas & Electric Co., from April 1, 1900, to September 1, 1901?

Ans. I don't know.

285. Can you obtain that information from an inspection of the books of complainant company?

A. I think the records are sufficiently complete to enable me to give you the average candle power per month for the period mentioned.

286. Will you do so and make that statement a part of your answer to this interrogatory?

Ans. Yes sir;

236 287. Does the complainant company force any air into its mains at the works of the company before the gas enters the purifyers of the company?

A. None that I am aware of except the air that is used to vivify the oxide in the boxes.

288. What per cent. of air do you force into those?

A. I could not tell you.

289. Can you obtain that information from an inspection of the books of complainant company?

Ans. No, sir;

290. I will ask you as a gas expert if, under the modern process of purifying gas by means of the oxide of iron, it is not an aid, in carrying on the purification process, to use air?

A. Some people use air and some do not.

291. Is any air used by the Peoria Gas & Electric Co., in its process of purification?

A. You will have to ask the superintendent about that; it is his business, not mine.

292. Who is the superintendent of the Peoria Gas & Electric Co., at the present time?

Ans. E. W. Eustis.

293. As a gas expert would you consider it proper, under the modern process for the purification of gas by means of the oxide of iron, to use air in the purifying process?

A. Yes, sir; if the superintendent wanted to and found it satisfactory.

294. Well, what per cent. of air in your opinion would you use in that purification process, if any?

A. I have not said I would use any.

(The MASTER:)

295. I understood you to say you don't know whether it is used or not at complainant's plant?

A. Yes, I don't know whether it is used or not.

(Mr. MANSFIELD:)

237 296. What is your opinion as a gas expert, irrespective of anything that is done at the Peoria Gas & Electric Company's plant, as to the per cent. of air used in the modern process of purification of gas by means of the use of the oxide of iron?

A. I never have known anybody to use more than 2 %.

297. Would you, as a gas expert, recommend the use of 2 % of air in the purification of gas by means of the process known as the oxide of iron process?

A. I would recommend the superintendent to experiment with it and find what was the best per cent. for him to use, if he wanted to use it at all.

298. What do you base that percentage upon when you say 2 %— 2 % of what do you mean?

A. 2 % of air as compared with the total volume of gas purified.

299. Do you have reference to the volume of gas as made per day

A. It don't make any difference when it is made; if it is a per cent., it is a per centage no matter whether it is an hour, a day or a year.

300. Don't you know as a gas expert that through the United States, where the oxide of iron is used for the purification of gas, from 1 % to 2 % of air is used?

Ans. No, I do not.

301. What is your knowledge in that regard?

A. I stated before that some people use air and some do not.

302. What is the capacity of the ammonia plant connected with the Peoria Gas & Electric Co.'s, works at Peoria?

A. What do you mean by capacity?

303. How many cubic feet of gas would that plant be able to take care of in the course of 24 hours?

A. It could take care of the ammonia from about 400,000 or 500,000 feet of gas.

304. Is not every ammonia plant constructed to take care
238 of just a certain amount of gas?

A. I don't know about that; a good many ammonia plants are constructed that I don't know about.

305. What is the name of the company that manufactured the ammonia plant for complainant company?

A. The Michigan ammonia works.

Mr. IRWIN: I desire to call the attention of the master to an article appearing on page 10 of the Chicago American of date November 10, 1901, wherein it quotes what purports to be a portion of the examination of Mr. Little, as follows: "What do you mean by an effort to secure favorable legislation?" asked Attorney Mansfield "I do not mean bribery money" replied Mr. Little with a smile "the gas companies must spend money to secure legislation they are entitled to in all justice; even though they are entitled to it, there is no certainty of their receiving it, and in the event of failure there is a dead loss." Now, if the master please, there has nothing occurred in this examination to justify such a statement; the alleged representatives of this newspaper have been present at times during the examination of Mr. Little and either counsel for defendant is responsible for that statement directly or indirectly and I move that

the reporters of the Chicago American, and anyone connected with it, be excluded from this hearing; such articles as this are unfair to the witness and unfair to everybody. I insist that counsel for defendant either fothers this article or joins in my request.

Mr. MANSFIELD: Where did the reporter get that evidence?

Mr. IRWIN: I don't know; he didn't get it from our side of the case and there is nothing in the record showing that the witness made any statement of that kind and if the reporters for that paper are coming around here simply to publish falsehoods they
239 have no business here; I don't care how much they publish if they publish the *the* facts; we are willing to stand by the facts.

The MASTER: I think the better way, so far as representatives of the press are concerned, would be to send them to the stenographer when they desire information and let him give them such information as should be published.

Mr. IRWIN: I am perfectly willing that that method should be adopted, but such articles as this are published simply to prejudice the case and I don't propose to put up with it; I think counsel for defendant ought to join with me, in justice to himself, in asking that the reporters of this newspaper be excluded from this hearing.

Mr. MANSFIELD: I am sure I have had nothing to do with the publication of this article and I don't think any attorney of standing would countenance such a thing. I was surprised when I saw the article, and don't know who it came from or anything about it.

The MASTER: I think the master has power to make the order asked for and now directs that any newspaper reporter, or the reporter of any publication, who is present at these hearings and publishes matter as the testimony of any witness that has not been testified to by the witness, will thereafter be excluded from these hearings until such time as this order may be modified by the court. The master deems this course necessary and proper and just to all parties concerned.

Mr. MANSFIELD: The defendant now closes the cross-examination of Mr. Little reserving the right to further examine him with reference to any of the statements he has been asked to furnish when they are produced.

Re-direct interrogatories by Mr. IRWIN:

1. You were asked on cross-examination with reference to a schedule purporting to have been made by you of the property of the complainant company for the year 1900. Will you now state
240 upon what basis you made whatever statement may have been made by you for the purpose of taxation regarding the property of complainant company?

A. The property of the Peoria Gas & Electric Company, as scheduled by me for the purpose of taxation was valued at what I considered to be the fair cash value of such property disassociated from

the franchise of the company, simply as property in the place in which it was located at that time.

Q. Will you explain how the difference in value, if any, as fixed by you in any schedule made for taxation differs from the cost price of such property to the complainant company in the construction of its plant?

A. Separating the property from the franchise of the company reduces it merely to the value of the physical property for any use for which it might be desired. As an illustration of what I mean by this: The buildings upon the property purchased from the Clarke Bros., constituted a complete set of distillery buildings when we bought the property and had cost many thousands of dollars and they were probably worth all they cost for dis-illing purposes, but when the property was wanted for gas works it was necessary to wreck those buildings and the salvage, or amount received by the complainant company, after paying the expenses of wrecking, was less than $1000. The gas mains of the company, as laid in the public streets, without the authority of the franchise to use them, would be worth merely their scrap value as cast iron less the necessary expense of taking them out of the public streets. The franchise of the company give- them the only value they have beyond the salvage.

(The MASTER:)

3. Do you mean the franchise or license from the city?

A. Franchise or license. I refer to the franchise as the right acquired by the company by virtue of the city ordinance of
241 the city of Peoria to conduct and operate a gas plant and main system and do not refer to the franchise of the company to be a corporation.

(Mr. IRWIN:)

4. In the statement made by you for taxation did you give what you considered the fair, cash or market value of the property so scheduled as belonging to the complainant company based upon the valuation in the manner stated by you?

Ans. Yes sir; I did excepting only, that in the case of any item about which I was in doubt, I valued the property at the fullest possible amount which I believed it could be sold for.

5. You were asked on cross-examination with reference to item No. 7 and set forth on Exhibit "2." I will ask you up to what date that interest account was charged to the cost of the gas plant?

A. Up to May 1, 1900.

6. Was there anything charged on interest account No. 7 as against the cost of the gas plant of complainant company after May 1, 1900, about the time the plant was completed for the manufacture and delivery of gas to consumers?

Ans. No, there was not.

7. Was there any interest charged after May 1, 1900, as against the operating expenses of the company up to September 1, 1901?

A. No, there was not.

8. Was there any interest charged against the cost of operating the plant from May 1, 1900, to September 1, 1901 under account No. 7, for interest, or under any other account offered in evidence in this case against the operating expenses of complainant company?

A. No, there was not. The operating expenses as testified to by me do not include any interest whatever during the period mentioned.

9. About how many service pipes has the complainant in the city of Peoria extending from the mains into and through the property of consumers?

A. There were 2426 service pipes owned by the company
242 on September 1, 1901.

10. About what portion of such services, is or has been in use, up to September 1, 1901?

A. I cannot give you the exact figures, but taking it in percentages, I think fully 80% and probably 90% have been in use at one time or another since they were installed up to September 1st, 1901.

(The MASTER:)

11. Have you put in any service pipes on streets which were improved since your mains were laid?

A. Yes, when the mains are laid in unpaved streets, we only put in a service to applicants who expect to use gas, but if thereafter the street is about to be improved, we put in services so as not to disturb the paving in event people should want gas after the date of the paving of the street.

(The SAME:)

12. Is there any rule, ordinance or requirement of the city of Peoria that has anything to do with that?

A. Our ordinance requires us to at least put in the service up to and beyond the curb line prior to the paving of the street.

(Mr. IRWIN:)

13. Did you receive any orders from the city with reference to putting in such services prior to the making of any permanent pavement where there was no such demand for such service pipes from the respective property owners along the street?

A. In all cases where the street is about to be improved, the commissioner of public works, or superintendent of streets, is directed by our ordinance to notify us 60 days prior to the beginning of such improvement and instruct us to put in such service pipe. In some instances, these orders have not been in the form of a formal order but have been a telephone call from the commissioner of public works, or from the street superintendent,—a question or instruction

has been given by one or the other officer of the city to our superintendent or foreman. I think in every instance, however,
243 some form of order has been given to us to lay these services prior to improving the street.

14. Do such services as you have last referred to as having been laid by instructions from the city prior to the making of permanent pavements, include a large portion of the services not in use, or that were not used by the company, in delivering gas to consumers prior to September 1, 1901?

A. I could not state what proportion but a considerable proportion will come under that head.

15. What was the general average percentage of all your services in use during the period your plant operated in the city of Peoria prior to September 1, 1901?

A. I think 80% is the lowest number at any one time and I think, without referring to the complete record on the subject, that at times fully 90% of the services have been in use.

16. You testified on cross examination that complainant company had made up to September 1, 1900, a total of 18,942,213 feet of gas; that it sold during that period to consumers a total of 15,475,200 cubic feet, making a difference as I compute it of 3,467,013 feet. What became of that difference between the amount manufactured and the amount sold during that period?

A. 10,800 feet was used at the office of the company; 182,500 feet was used at the works of the company; 142,000 feet was given to the directors of the company in lieu of other compensation, and the remainder was lost through leakage in the street mains and services of the company.

17. About what percentage of the total amount of gas manufactured by the company during that period was leakage?

A. 16½%.

18. Was that an unusual leakage for a new plant during that length of time?

244 A. No, it was not; a greater portion of that was lost in the first few weeks of the operation of the plant, but the leak was soon discovered and the amount of gas lost was materially reduced.

19. You also stated on cross examination during the period from September 1, 1900, to September 1, 1901, the complainant company manufactured 55,215,078 cubic feet of gas and sold to consumers through meters during the same period 51,178,300 cubic feet of gas. Can you tell me what became of the difference between the amount manufactured during that period and the amount sold to consumers?

A. 366,700 cubic feet was used at the office of the company; 683,700 cubic feet was used in the works of the company; 867,00- cubic feet was donated to the directors of the company in lieu of other compensation and the remainder was lost through leakage in the street mains and services of the company.

13. When you laid your mains on South Adams street, did you not lay service pipe to the curb line along said street?

A. Yes, to the curb line and into the houses of people who applied for services.

14. Were any service pipes laid in the city of Peoria by your company where the property holders or consumers were required to pay for the service pipe?

Objected to unless the question is confined to the time prior to September 1, 1900?

A. I have no recollection of any such cases.

248 15. You testified on re-direct examination that the total amount of gas manufactured by complainant was 18,942,213 cubic feet and that the amount of gas sold to consumers was 15,475,200 cubic feet. How much of that difference did you say was given to the directors of the complainant company?

A. 142,000 feet.

16. Was any account kept, or any credit given upon the books of the company for the amount of gas so furnished to the directors?

A. A record was kept of the amount of gas so furnished, but it was not charged to any of our expense accounts, except to the general expenses of the manufacture of the entire amount of gas made.

17. If the price charged for that gas so given to the directors of that company had been charged to them, would it have reduced the cost of manufacturing the gas in the city of Peoria?

A. No, it would not; it would have to appear on one side charged against the expense account and on the other side credited to the earning account, and it would be as broad as it was long.

18. What was this gas donated to the directors of the company for?

A. In lieu of other compensation.

19. How much was due and owing to the directors of complainant company at that time?

A. Nothing that I know of; we simply compensated them for their services as directors by giving them free gas.

20. Would there have been any difference in the cost of manufacturing the gas if the directors had paid cash for the gas so donated to them?

—. That would depend on whether or not the directors were compensated in some other way for their services; if you figured that out at the selling price of gas during that time it would only

249 make a difference of a fraction of one per cent. of the cost of manufacture.

21. You have also stated on re-direct examination that 867,000 cubic feet of gas was furnished to the directors of the company from September 1, 1900, to September 1, 1901. Did the fact of the donation of that amount of gas to the directors make any difference in the cost of the manufacture of gas as shown by Exhibit "6"?

A. If we had not donated that gas to the directors, we would

otherwise have compensated them for their services and probably would have paid out more money in that way than by donating the gas to them.

22. Would the donation of that gas make any difference in the cost of the total amount of gas manufactured by your company during that period, irrespective of whether you paid your directors or did not pay them?

A. The proper compensation of the directors, officers and other employés of the company is part of the cost of the manufacture of the gas and if they were properly compensated for their services with money such payment would undoubtedly have increased the cost of gas beyond the point shown in the statement I have presented.

23. Did you take into consideration, when making up Exhibit "6," the fact that 867,000 cubic feet of gas was donated to the directors of your company?

A. Exhibit "6" represents the cost of all gas manufactured during the period shown by the statement and includes the cost of the gas that was donated to the directors of the company.

24. Was any corresponding credit made on the books of the company for the gas so furnished those directors?

250 Objected to as immaterial.

A. Neither debit or credit entries were made on the books of the company covering that transaction.

25. If the total cost of the manufacture of gas shown by your statement was $60,257.25 from September 1, 1900, to August 31, 1901, what would be the cost per thousand cubic feet for the manufacture of 52,045,300 cubic feet?

Objected as that is a matter of computation and the witness has not qualified himself as a mathematical expert.

A. It would not make a bit of difference in the cost of manufacture; it would simply increase our earnings in that respect if the directors had paid for the gas. If they had paid for the gas, it would have increased our earnings but not the cost of manufacture.

26. The question is whether or not you did not give that gas to the directors for nothing?

A. If they had paid for it our earnings would have been so much greater; if we had not given it to them they would have bought it.

27. Can you answer my former question?

A. No, that is a mathematical question and I am not qualified to answer; of course, I could if given a reasonable time make a computation of that kind and verify it and, if the master will give me time, I will do it.

The MASTER: I don't think we will wait.

28. When do you measure gas for the purpose of testing its candle power?

A. Usually every day; sometimes twice a day.

29. At what period in the manufacture of the gas, before it has gone through the purification process or afterwards?

A. After it is purified.

251 30. Would that be after the air has been forced in as you have testified?

A. I have not testified that any air has been forced in.

31. You testified on re-direct examination that by the mixture of 2% of air with gas the candle power of that gas would be decreased by about one candle?

A. Yes, if it were 18 candle gas.

32. How do you determine that?

A. It has been determined frequently by experiment.

33. What is the nature of the experiment used in determining it?

A. You take the candle power by a photometer before and after the introduction of the air.

34. When do you introduce the air, before the gas is purified or subsequently?

A. I have not testified we introduced any air at the Peoria plant.

35. As an expert for the purpose of determining how much air there is in gas, do you make a chemical analysis of the gas?

A. I never made one for that purpose.

36. Do they make chemical analyses for that purpose?

A. Some people do and some do not; it depends whether they have the facilities for it or not and want to arrive at such a determination.

37. Have they facilities for such chemical analysis at the gas plant of complainant company?

A. I never knew of any occasion when we cared to determine the percentage of air in manufacturing gas and whether we have facilities for it or not, I don't know.

38. As a gas expert, state if it is possible to determine the effect on a candle power of gas by forcing 2% of air into the

252 mains and mixing it with the gas before it reaches the purifying box, by making a test of the gas before and after the air is forced in?

Objected to as immaterial and not proper re-cross examination.

A. The air, if introduced, would not be introduced into the mains at all; I have spoken of mains here as representing the street mains of the company and the effect of the introduction of air would not be made in such a manner as indicated by your question.

39. How do you conduct your gas from one part of your plant to the other?

A. Through the ordinary house or yard piping.

40. Can you determine the effect on the candle power of gas by forcing or mixing with that gas 2 % of air and testing the candle power of the gas before and after the air is mixed with it?

A. I think personally I could not.

41. Can you distinguish a difference or effect upon the candle power of gas by the introduction of one per cent of air by testing the gas before and after the mixing of the one per cent. of air with the gas?

Objected to as not proper re-cross examination.

A. I have never made such an experiment.

Mr. MANSFIELD: I would like to reserve the right of asking Mr. Little some questions in reference to some service pipe as soon as I can get the information I have asked for from the books of the company in Peoria; with that exception I am through with Mr. Little.

Mr. IRWIN: If it is prior to September 1, 1901, we have no objection.

And further the witness saith not.

Adjourned until Saturday, November 16th, 1901, at 9:30 a m.

253 Directors' room, National Bank building.

CHICAGO, ILL., SATURDAY, *November* 16, 1901—9:30 a. —.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin and Mr. E. C. Ritsher appearing for complainant. Mr. Henry Mansfield appearing for defendant.

EDWARD G. COWDERY, called on behalf of the complainant, being first duly sworn, deposes and saith.

Direct interrogatories by Mr. IRWIN:

1. State your name, age and residence?

A. Edward G. Cowdery; 45; Milwaukee, Wis.,

2. What business are you engaged in?

Ans. Manufacturing gas.

3. What position do you now hold in Milwaukee?

A. General manager of the Milwaukee Gas Light Company.

4. How long have you held such position, or other similar positions connected with the manufacture and sale of gas?

A. 25 years.

5. Are you familiar with the business of the manufacture and sale of gas?

Ans. Yes sir;

6. Are you familiar with the different processes entering into the manufacture of gas?

Ans. Yes sir;

7. Have you made the business of the manufacture and sale of gas a specialty for any period of time, if so, about how long?

A. Yes sir; about 25 years.

8. What investigations have you made, if any, of the different

processes of the manufacture of illuminating, or fuel gas for genera purposes?

A. I have investigated the various new processes as they have come out.

9. Please give a brief history of the art of manufacturing gas?

254 A. Coal gas was manufactured and distributed as illuminating gas first, I think, about 1830, in London; I think it was first introduced into this country in New York about 1838, or thereabouts. There was no other process for manufacturing gas, other than what is known as coal gas, that was introduced in a practical way, until about 1870, when water gas was perfected and came into use as an artificial gas for general distribution. What are known as coal gas and water gas are the two principal gasses made for general distribution. There have been various other kinds of gas, such as a mixture of what is known as fuel gases, made up in various ways—all oil gases, either pure or diluted with air etc.

10. What are the general processes now in use for the manufacture and sale of illuminating and fuel gas for general purposes in cities?

A. What is known as coal gas and carburretted water gas?

11. Will you describe the modern process of the manufacture of coal gas and the changes in apparatus and machinery and mode of that manufacture within the past 25 years?

A. Coal gas in manufactured by the distilling of coal in heated ovens or retorts manufactured for the purpose; the gas being driven off by means of heat solely and the resulting product treated by washing, condensation, purification etc., until it is ready for distribution. The improvements in manufacture have been in the methods of treating, or purifying the gas, and in the application of the various details of manufacture, in order to cheapen the cost of production. We still distill coal to make gas the same as was done in the beginning.

12. Why do you call them improvements?

A. They are only improvements as they improve or cheapen the cost of production.

13. What has been your opportunities for experiment in the
255 manufacture of gas with different plants you have had charge of or visited during the period of time you have been in the business you have named?

A. My opportunities for experiment have been only such as one obtains by conducting the business and making such experiments as they choose to make in that way; my opportunities of learning of the improvements, or the methods of reducing the cost, have been by observation, going about from place to place where gas is manufactured and observing the different methods under which it is produced.

14. What have been the different types of furnaces invented, or used, or the improvements thereto, in the last 25 years?

A. Retort furnaces, do you mean?

15. Yes sir, any furnace used in the manufacture of coal gas?

A. They formerly used what is called the open firing, or brick firing furnaces, which heated the retorts; in later years, within the last 20 years, or thereabouts, there has been adopted very generally, what are known as re generative furnaces, furnaces that generate a pure gas from the fuel used in the furnaces; that gas being burned in and about the retorts in the ovens to heat the ovens; there has been two styles of those generative furnaces in use, one called the full depth furnace and one a half depth furnace.

16. What different types of benches have been in general use in that business, and what changes have been made therein, in the last 25 years?

A. We formerly used furnaces in ovens that had but three retorts in each oven, and those have been increased to 3, 4, 5, 6, 8 and 9 and upwards.

17. Why?

Ans. Economy of fuel.

18. What is the number of retorts now per bench in general use, and what changes have been made in that regard in years past?

256 A. The number of retorts in general use to-day throughout the country is either 6 or 9—I might also add 8, probably.

19. Has there been any change in the past 25 years with reference to the number of retorts per bench?

A. The tendency has been to increase the number of retorts during that time.

(The MASTER:)

20. Is that regarded as economy in the cost of production?

Ans. Yes sir, economy of fuel in heating the retorts.

(Mr. IRWIN:)

21. What changes or improvements have been made in the purification process of gas in the last 25 years?

A. Formerly lime was used almost entirely for purifying gas, but within the last 25 years they have very generally adopted the use of oxide of iron, and lime for purifying has almost gone out of use.

22. Has the change in the mode of purifying gas required a change in the apparatus or machinery use- for that purpose?

A. Not necessarily. To commence with we used the same class of purifiers with the oxide of iron purification as we did with the lime, but latterly they have been adopting a change in the purifiers, one in which lime would not be best adapted for, that is a deeper box, passing the gas to a deeper bed of material.

23. What different processes, or kinds of gas, are now considered by expert gas manufacturers as the best and most economical for general use?

A. There are only two standard processes, the coal gas and carbonated water gas.

24. In your experience as a gas manufacturer, what different plants, if any, have you examined throughout the country within the past few years?

A. I have been in Toronto, Canada, Buffalo, Syracuse, Albany, Providence, New York city, Brooklyn, Philadelphia, Baltimore, Washington, D. C., Pittsburgh, Cincinnati, Columbus, Dayton, Toledo, Cleveland, Ohio; Detroit, Grand Rapids, Michigan; Chicago, Ill., Louisville, Ky., New Orleans, St. Louis, Kansas City, Denver, Omaha, Minneapolis, St. Paul and Milwaukee. In a general way that covers the ground of the larger works as I recollect.

257

25. Have you had charge of any other plants as manager, or otherwise, except the plant at Milwaukee?

A. Yes sir, I have been the president of the Racine Gas Light Company the last 2½ years and during that time have constructed an entirely new plant at that point. I have been the president of the Kenosha Gas Company, which is now the Commercial Gas & Electric Company, for the last 4 years; during that time the plant has been added to and largely re-renovated, but not entirely reconstructed. Those are the companies I have been directly interested in and in an advisary way more or less perhaps with several other undertakings.

26. How long did you say you had been connected with the Milwaukee gas plant?

—. I said 25 years, but I really went with the Milwaukee Company in the spring of 1877; I might state that for two years, from 1880 to 1882, I was with the Peoploes' Company in Chicago, Ill.

27. Have you examined the plant of the Peoria Gas & Electric Company in the city of Peoria?

Ans. Yes sir.

28. Please refer to Exhibit "1" and state whether the same substantially represents the general plan of the plant of the Peoria Gas & Electric Company in the city of Peoria?

A. Yes sir, Exhibit "1" represents the plant as I saw it.

29. Please describe the plant of the Peoria Gas & Electric Company with reference to its general equipment and capacity?

A. It consists of a retort house with six benches of 9 retorts each, full depth regenerative furnaces; a condensing plant, consisting of the primary air condenser, tar extractor, secondary air condenser, multifarious water condensers, washer, two tower scrubbers; two purifying boxes; station meter; gas holder; boiler house; fixing bench; ammonia concentrating apparatus; tar and ammonia warehouse; naphtha storehouse; coal storage house; coke storage house; office and meter and fitting shop buildings; all necessary pipe connections of all kinds, gas, water, steam and sewer.

258

30. Are you acquainted with the general location, size, improvements and topography of the city of Peoria?

A. Fairly well, as I was in the city and drove over the city quite thoroughly.

31. Assuming that the population of the city of Peoria, and territory tributory to the plant of the complainant company, is about 65,000 inhabitants, what in your opinion should be the size, nature and character of a gas plant constructed to manufacture and sell coal gas in the said city of Peoria?

A. To answer that question strictly I will say that I would have built works double the size of this one, but under the conditions that existed in Peoria, they having a gas company already established there, I should have followed the same rules that were followed in this case in building works in that city, viz:—one hundred and twenty-five million cubic feet per year output.

32. What is your opinion of the plant of the Peoria Gas & Electric Company in the city of Peoria with respect to its fitness in size, character and equipment for the manufacture and sale of gas in said city, taking into consideration the element of future growth etc.?

A. I think I have already answered the question so far as size is concerned, and the plant is built with the idea of the greatest economy in the manufacture and furnishing of gas for a plant of its size. Of course a plant in a large city like Chicago would
259 probably be built along somewhat different lines.

33. How is the plant of the Peoria Gas & Electric Company with reference to size and capacity in your judgment, suitable to a city of the size, character and topography of the city of Peoria, where the same is located, taking into consideration the conditions there existing?

A. I think the plant is well suited to the city under the conditions existing as to size and as to general character, and I do not see how it could be better located than it is.

34. What in your judgment is the character, size and capacity of the plant of the Peoria Gas & Electric Company in the city of Peoria with reference to judicious investment and outlay, taking into consideration the conditions in 1900 and 1901,—up to say September 1, 1901, as appears from the size, character and location of the city?

A. I considered in looking it over that they had wasted no money whatever in its construction, and I was not able to see how they could have designed works, or other system, so as to have saved materially over the expenditures made, that is, over the amount of work done.

35. What in your judgment would be the proper and judicious character of a gas plant to be constructed in a city of the size, character and location of the city of Peoria—referring now to a coal or water gas plant?

A. I have not undertaken to go into the subject with all the figures necessary in order to determine absolutely whether a coal or

water gas is preferable in the city of Peoria, but under the conditions that have existed during the last 2 or 3 years in relation to the price of oil, and the fact that we could hardly buy oil except from the Standard Oil Co., it has been generally considered by all the gas companies in this part of the country, that it was
260 more economical to operate coal gas works than it was water gas works.

36. Are you familiar with the cost during the years 1899 and 1900, of the various items of labor, machinery and material entering into the construction of a gas plant of the capacity and character of the plant of the Peoria Gas & Electric Company?

Ans. Yes, sir.

37. From your examination of the plant of the Peoria Gas & Electric Company and from your knowledge of the cost of the construction of similar plants, are you able to state what would be a reasonable cost price of the plant and mains of the Peoria Gas & Electric Company, if constructed during the years 1899 and 1900?

Objected to because no proper foundation has been laid.

A. Yes, sir;

(The MASTER:)

38. Have you any knowledge of the amount of mains and their size of the Peoria Gas & Electric Company in the city of Peoria?

Ans. Yes, sir;

(Mr. IRWIN:)

39. From your examination of the plant of the Peoria Gas & Electric Company, and from your knowledge of the cost and price of labor, machinery and materials, please state what, in your opinion, would be the reasonable cost of the construction of said plant, fully equipped, tested and ready for the delivery of gas to consumers, assuming said plant was contracted for and erected during the year preceding September 1, 1900, and excluding from your estimate the cost of the real estate, and also excluding the cost of mains, services and other expenses outside of the construction and equipment of the manufacturing property and in your estimate please give items in detail so far as you can?

Objected to because no proper foundation has been laid; the witness not having testified that he knows anything about the soil in the city of Peoria, or that he knows what the price of labor was that entered into the construction of the plant during the period of construction.

261 A. I have made an estimate of the cost of construction of the works and my estimate in detail is as follows, viz:—Retort house building $12,000; purifying and boiler room building $18,000; office and meter shop building $4000; meter house $2000; oil house $500; coal and coke sheds $12,000; stack benches in the re-

tort house $23,000; two purifyers, their supports and pipe connections $7000; condensing house apparatus $12,000; two boilers set ready for use $3000; ammonia concentrating apparatus $2500; holder and foundation $28,000; station meter and connections $3000; fixing bench $2500; pumps, water tanks, elevator and conveying machinery $3500; tar and ammonia wells $3000; photometric and chemical apparatus $1000; Connelly governor and connections $1500; gas mains and valve connections about the works $4500; gas, steam, water pipes, sewers and tools, used in the operation of the works, $5000. To the sum total of these items I have added 10% for the superintendency of erecting plant, plans and general small items amounting to $14,700, making the total $161,700.00.

(The MASTER:)

40. Did you find those several items, of which you have testified, all existing in complainants company'- plant in the city of Peoria, at the time you made your examination?

A. I did not examine every pipe in the works, or examine those underground, but know that the works were in operation and that they must be there; the figures were made upon the general average cost of those items in the construction of the works. This estimate was made while I was on the ground.

(Mr. IRWIN:)

41. Did you examine the city of Peoria with reference to the cost of laying gas mains in and through the several streets alleys and highways of the city?

A. Yes sir; I drove over the city, looked over the streets and alleys wherein mains had been laid and distinguished the difference between those that were under paving and those that
262 were not and, of course, the length of mains laid of the various sizes, I got from the records of the company and from the maps exhibited to me as to where the mains were.

42. Did you make an estimate of the cost of the pipes and the laying of the same in and through the several streets and highways of the city of Peoria, assuming that certain number of feet of pipe of different sizes were laid in and through such streets?

A. Yes sir.

43. Will you give in detail so far as you can, your estimate of the cost of the laying of pipes in and through the several streets and highways of the city of Peoria, based upon the assumed length and size of each kind of pipe estimated, and the character of the street or alley in which they were laid?

A. 1759 feet of 16 inch main at a cost of $2.25 per foot laid, amounting to $4358.75. 21,229 feet of 12 inch pipe laid at $1.50 per foot amounting to $31,843.50. 3483 feet of 10 inch main at $1.00 per foot laid amounting to $3483.00. 19,465 feet of 8 in. main at 90c. per foot amounting to $17,518 50. 12,807 feet of 6 in. main at 70c. per foot amounting to $8964.90. 79,486 feet of 4 in. main at 40c. per

foot amounting to $31,794.40. There were laid in streets previously paved 37,864 feet of main of all sizes, the cost of replacing the paving at $1.00 per foot of main laid amounting to $37,864.00, making a total of $135,827.05.

44. Did you make an estimate of the cost of laying any number of service pipes from the street mains of complainant company in and through the property of the consumer along the lines of said mains respectively?

Ans. Yes sir.

45. Name the number of service pipes you estimated and the cost thereof, including labor and material?

A. The number of service pipes taken from the records of the company was 2468; the average length was assumed to be
263 from the main to the building 85 feet each at an average cost of 25c. per foot for the services laid, amounting to $23.75 each or $58,615.00.

46. That includes both labor and material?

A. Yes sir; and replacing such paving as was taken up to make connections.

47. Did your estimate of the cost of mains include both labor material, repaving and everything connected with the laying of such mains of the size and length named?

Ans. Yes sir;

48. Would that, in your judgment, be the fair market price of the labor and material in laying such mains and services during the year preceding September 1, 1900?

Ans. Yes sir;

49. Would your estimate as to the cost of the plant, in your judgment, include the fair market value of all the material and labor entering into the construction of the plant during the year preceding September 1, 1900?

Ans. Yes sir;

50. In your estimates heretofore given as to the cost of the plant, mains and services of the Peoria Gas & Electric Company, have you included in your estimate any amount for the legal organization of the company, the equipment and organization of its business force, cost of advertising, solicitors etc.?

Ans. No sir;

51. In your judgment what would be the reasonable cost of such services and equipment?

A. I would not be able to give any estimate of that.

(The MASTER:)

52. Is there any way by which that can be approximated, or accuratety reckoned?

A. I don't think there is any rule for that; I never heard of any; the conditions are so very different in every town you go in; in Peoria they had competition and the expense would naturally run very high in such a case.

(Mr. IRWIN:)

53. In your estimate heretofore given as to the cost of the
264 plant, mains and services of the Peoria Gas & Electric Company have you included in your estimates any amount for service tools?

A. I did not include anything for the tools used in the street construction; it was an error on my part; I should have included something for them.

54. What, in your judgment would a proper amount be for such service tools for carrying on that work?

Ans. $5000.00.

55. In your estimates heretofore given as to the cost of the plant, mains and services of the Peoria Gas & Electric Company, have you in your estimates any amount for meters?

A. I have not, as yet, given you any estimate on the cost of meters.

56. Assuming that there was a meter for each service, what, in your judgment would be a reasonable estimate of the cost of the meters?

A. For meters and connections, the short pipes that connect the meter to the services on each side which are generally included in the cost of meters, my estimate would be $8.00 apiece on the average.

57. Did you make a lump estimate of the number in use by the complainant company in Peoria?

A. No sir. I obtained from the company from their records the number of meters they had which was 2140; these estimates were given me as of September 1, 1900.

58. Is there any other item of expense that you took into consideration in estimating the cost of the Peoria Gas & Electric Company's plant in the city of Peoria, fully equipped for delivery of gas?

A. I have the item of office equipment, books, furniture etc., sufficient generally to stock the company for operation put down at $15,000.00.

(The MASTER:)

265 59. Is that estimate based on the office equiment you found in complainant's plant at Peoria?

Objected to by defendant.

A. No sir.

(Mr. IRWIN:)

60. Is the expense, such as you have last testified to, for office equipment etc., a necessary expense in the equipment of any similar plant of the character of the Peoria Gas & Electric Company?

A. Yes, sir; it is an expense that is always incurred, as much as any other portion of the works.

61. Was such an expense necessary in that case for the prope conduct of its business?

Ans. Yes sir.

62. What candle power, in the case of water gas is required i order to give the public a service as satisfactory as an 18 candl power of coal gas?

Objected to as immaterial and incompetent.

A. I should judge 23 to 24 candle power.

63. What is the highest candle power in coal gas deemed mos efficient for ordinary, general use by consumers?

A. 17 to 18 candle power.

64. Is that candle power for coal gas deemed most suitable fo illuminating purposes?

Ans Yes sir.

65. Is it also deemed desirable candle power for fuel purposes?

A. Yes sir.

66. Why is the higher candle power not desirable in coal gas?

A. The difficulty of burning it without smoking.

67. What elements and forces contribute to the depreciation of a gas plant and its mains, and how and to what extent do they act?

A. The depreciation of a gas plant is due first, to the wearing out, rusting out of the apparatus, which is made of iron, and in the case of the buildings they are generally going to pieces; further in the change and improvements of methods which take
266 place from time to time; prudence in construction requires different buildings, different apparatus, and it is frequently necessary to throw away one piece of apparatus and replace it with another. In the case of the mains and services, the destruction comes about from the action of the soil in which the pipes are laid, the soil being acid, or impregnated with sulphur compounds, which when they become moist, act very rapidly upon iron—particularly wrought iron. Further than that, the action of electrolysis to-day, which is the largest and greatest factor, is probably destroying very rapidly property of this character.

68. In what manner, in your opinion, does good business policy require this depreciation to be taken into account in conducting the business of a gas company?

Objected to as immaterial and incompetent and for the further reason that the witness has not testified to any knowledge as to the soil, or acids in the soil at Peoria, Ill., and consequently is not qualified to testify; also, because he has not shown any depreciation was caused.

A. The best business policy would be the establishing of a fund in which a portion of your earnings should be charged to each year to take care of that depreciation as it occurs.

69. Does such elements of depreciation, as you have named before,

exist to a greater or less extent, in all cities of the size, and character of the city of Peoria?

Ans. Yes, sir.

70. What, in your opinion, would be a proper percentage of the entire cost of the works of the plant of the Peoria Gas & Electric Company, to be charged off annually as the average annual depreciation, taking into consideration the conditions as you found them in your examination of that plant?

A. The average annual charge for depreciation on the works would undoubtedly amount to as much as 5%; I mean by
267 that, 5% of the cost of the works exclusive of real estate.

(Mr. MANSFIELD:)

71. Do you include in that the cost of the mains?

A. No sir;

(Mr. IRWIN:)

72. When you refer to the gas works, what portion of the plant do you refer to?

A. The entire cost of the works exclusive of real estate.

73. What is including in the word "works" as distinguished from the word "mains"?

Ans. The manufacturing plant.

74. How should the depreciation, if any, be taken care of, accruing to the balance of the plant of a gas company?

Objected to because the witness has not shown he is qualified to answer as to the depreciation of the mains, or the condition of the soil, or acids in the soil, in Peoria, and that is the only thing he can found the depreciation upon.

A. I have estimated the depreciation in a general way without studying all the particular conditions that exist in Peoria, and also without making any allowance for electrolysis, because the actual amount of depreciation there is an unknown quantity so far as Peoria is concerned, so far as I know. My estimate for the mains is 1% depreciation per annum of the cost of the mains; 5% on the cost of the services and 7% on the cost of meters.

75. Under your plan of estimating depreciation, what accounts do you carry depreciation on of other items accruing to the plant or works, such as repairs etc.?

A. I suppose I h-ve covered the general grounds of depreciation in my figures.

76. About what percentage would the repair account be on the cost of the plant outside of real estate?

Objected to because the witness has testified he has taken all matters into consideration in the figures already given by him.

A. I expect my figures of depreciation cover absolute re-
268 pairs but do not cover general expense items of taking care of mains or works. For instance, considerable money would

be spent each year in the streets and in the works which, under n custom, is charged to expense account, and which is not strictly repair account. These figures of depreciation I have expected cover the strictly repair accounts as well as depreciation.

(The MASTER:)

77. Is that depreciation 5 % on the manufacturing plant p annum?

Ans. Yes, exclusive of real estate.

(Mr. IRWIN:)

78. From your experience and observation in the manageme and investigation of gas plants, are you able to state what would l a fair and reasonable return to investors, taking into considerati the hazard of the investment on account of new inventions and com petition concerning which you have testified?

A. I think investors in gas properties are entitled to 10 % on the money invested.

79. Name some of the hazards aside from general depreciatio concerning which you have testified about, that face the busine of the manufacture of gas?

A. The general hazards are the conditions that exist so far a competition may effect the business; the constantly new and im proved things that are arising in connection with the business whic may, at any time, amount to a considerable cost and loss on the par of the company; the instability of the business generally, on ac count of the interference by legislative bodies. I think that is on of the greatest hazards.

80. How does electricity affect it?

A. Electric light as a competitor is a constant hazard.

81. Does natural gas have anything to do with it?

A. Natural gas very greatly enters into it in districts where natu ral gas exists, or is likely to be found.

82. Are you familiar with the general prices which prevailed
269 for coal, labor and materials entering into the manufacture o coal gas during the period from May 1, 1900, to September 4, 1900?

Objected to unless it is confined to the material and sale of the products entering into the manufacture in Peoria.

A. Yes sir;

83. Assuming that the Peoria Gas & Electric Company had been in operation from May 1, 1900, to September 4, 1900, and on Septem ber 4, 1900, was manufacturing and selling coal gas at the rate of about fifty millions cubic feet per year; and assuming that the pur chase of materials, the wages of labor and the expense of general operation were fair and reasonable, considering the location of the plant; and assuming further, that the management and superin tendency of the plant was sufficient and competent, what in your

opinion would be the actual cost per thousand cubit feet of the gas manufactured and delivered to consumers by said company on September 4, 1900, excluding the value of residuals, and excluding also, any charge for depreciation or interest on the investment?

A. That is a hard question to answer and I would like to answer it in my own way?

84. Do so. That is what I am asking for—your judgment about it?

A. I consider that the cost of gas, which I will give you per thousand cubit feet, after the company is well started or established and in good running order, would be according to the figures I will give you; but, during the first period of the operation of the company, particularly during the first four months—ordinarily I would say during the first year, the cost I will give would be greatly exceeded, and it would be impossible for me to give you an estimate of the fair cost during the first year's operation of the company; I can better establish the cost after the first year, and you can add anything you have a mind to to it. I understand you to ask for the cost of gas excluding residuals and excluding depreciation
270 or interest on the investment?

85. Yes sir.

A. It costs 83c. per thousand cubit feet after the first year's operation of the plant. The cost during the first year I could only make a rough guess at, but I should say you might add 50c. per thousand cubit feet to that up to the end of the first year.

86. Are you familiar with the prices charged the consumer for gas throughout the United States in cities say of 50.000 inhabitants and upwards?

Objected to as incompetent and immaterial.

A. Yes sir.

87. About how many cities are there in the United States of 50.000 inhabitants and upwards where there are gas plants?

Objected to same grounds as before.

A. I believe there are 78 cities of 50.000 inhabitants and upwards.

88. How many of the cities of 50.000 inhabitants and upwards throughout the United States sell gas to consumers at less than one dollar per thousand cubit feet, if you know, and name the cities?

Objected to same grounds.

A. There are 5 cities out of the 78 that have an established price for all their gas under $1.00., viz:—Dayton, Toledo, Cincinnati and Cleveland, Ohio I don't remember the other city, but I think there is one other outside of Ohio.

89. Can you tell how many of the cities in the United States of 50.000 inhabitants and upwards sell gas for a price exceeding $1.00 per thousand cubit feet?

Objected to same grounds.

A. Something like 25 which are more than a dollar.

90. How about the balance of the 78 cities?

A. The price is in and around about $1.00.

271 91. Were those the prevailing prices for gas, on or al
September 4, 1900, in cities of 50.000 inhabitants and
wards throughout the United States?

Objected to as immaterial and incompetent.

A. I don't believe there has been any change in more than 3
of the cities since that time; these figures are given as of the pres
time.

92. What were the conditions in the Ohio cities you have na
on or about September 4, 1900, for the economical manufactur
gas, compared with the conditions prevailing in the city of Peo

Objected to same grounds.

—. The Ohio cities were all far better located so far as getting t
coal was concerned, that is, they could obtain their coal at a c
siderable less figure than they could in Peoria, and otherwise,
plants in the Ohio cities named are old established plants, whe
the Peoria Company is a newer company in this particular c
which always tells against the company.

93. Assuming that the plant of the Peoria Gas & Electric Co.
the city of Peoria manufactured from May 1, to September 1, 1
about 18.942.213 feet of gas, and that the leakage during that per
was about 3.467.000 cubit feet of gas, is that an unusual leakage
the first four months of the operation of a plant of the charac
size and capacity of the Peoria Gas & Electric Company's plant?

A. No sir.

94. What is the general percent of leakage for the first
months' operation of a new gas plant?

A. 15% to 20% of the amount manufactured.

Cross-interrogatories by Mr. MANSFIELD:

1. From your description of the plant that was installed by
Peoria Gas & Electric Company in the city of Peoria, what wou
be the capacity of that plant as to the manufacture of gas
day?

272 A. Strictly speaking its capacity is 540000 cubic feet
day; ordinarily I would call it a plant of the capacity of h
a million feet a day.

2. Is that in your opinion one of the most modern and w
equipped plants, or is it one of the most modern and best equipp
plants that could be installed at the time of its installation in t
city of Peoria?

Ans. Yes, sir.

3. What was the bench capacity of that plant at the time of its installation?

Ans. 540000 feet a day.

4. What was the capacity of the condensing plant?

A. Half a million; I should think its capacity was 500000.

5. What was the capacity of each of the purifying boxes testified to by you per day?

A. It is necessary to take the two together. Taking the two together, it would be considered capacity for half a million feet a day.

6. What is the capacity of the storage holder per day?

A. 300000 cubic feet.

7. Is any part of the plant installed in the city of Peoria by the complainant company constructed for the purpose of taking care of the ammonia manufactured from the gas?

Ans. Yes, sir.

8. What is the capacity of that part of the plant constructed for the purpose of taking care of ammonia?

A. I should consider it had capacity to take care of half a million feet of gas per day, otherwise 50 tons of coal.

9. What is the technical name of that part of the plant which is used for the purpose of taking care of the ammonia?

A. The concentrator.

10. What is the name of the concentrator that is installed in the complainant's plant?

273 A. I do not know what the name of it is; I believe it was constructed by the Michigan ammonia works.

11. In the manufacture of 18 million cubic feet of gas from the first day of May, 1900, to August 31st, 1900, would it be necessary to use all the retorts of that plant for the purpose of manufacturing that amount of gas, or would it be necessary to use the whole plant for that purpose?

A. I presume that they used during that period about three out of the six benches.

12. In the manufacture of 51,178,000 cubic feet from September first, 1900, to September first, 1901, was it necessary for the Peoria Gas & Electric Company to use the whole plant in the manufacture of that amount of gas?

A. I should judge not.

13. What proportional part of the plant was operated by them in the manufacture of that amount of gas during that period?

A. It would be about half.

14. You have stated that the cost of the manufacture of 50000000 cubic feet of gas per year by the Peoria Gas and Electric Company, excluding interest on the amount of the investment and excluding the selling price of the residuals, would amount to about 83 cents per thousand cubic feet. What would be the selling price of the residuals resulting from the manufacture of that amount of gas in your opinion as an expert.

Objected to as not cross examination and because the question assumes the witness made a statement he did not make.

A. To give you the return for residuals it would be different in every place you go into, and it would be different also in the first year's operation of the plant from what it would in an old established company. For instance, in the manufacturing of coke,
274 in order to get a price for that coke, you would have to work up a market and as years go by you work up a better market and get a better price for it; I could not estimate what price the Peoria Company ought to receive for its coke; I would have to take what they did receive.

15. What would be the percentage of tar obtained from the manufacture of fifty million cubic feet of gas?

A. They would receive from 12½ to 15 gallons of tar per ton of coal used.

16. What would be the percentage of the amount of coke produced per ton of coal burned in the manufacture of fifty million feet of gas?

A. It would produce two thirds of the weight of the coal in coke or 65 per cent.

17. What amount of ammonia would be received from the distillation of one ton of coal in the manufacture of gas?

A. Four pounds of pure ammonia per ton of coal used.

18. You testified on direct examination that you had a chemical apparatus connected with all modern installed gas plants. Is there a chemical lab-ratory connected with the gas plant installed by the Peoria Gas & Electric Co. in the city of Peoria?

A. Yes sir.

19. Where is that located?

Ans. In the meter house.

20. In the manufacture of gas is there any by-product obtained called nap-thaline?

Ans. Yes sir.

21. Is the plant constructed by complainant company in the city of Peoria so constructed as to take care of that by-product called nap-thaline?

A. It is intended to be constructed so as not to produce nap'-thaline.

275 22. Is there any nap-thaline produced in the manufacture of gas by the Peoria Gas & Electric Co.?

Ans. I don't know.

23. Do you know anything about the condition of the soil under the paving in the city of Peoria?

A. Only what I have been told.

24. In arriving at your figures, with reference to the cost of laying the mains and pipes in the city of Peoria, did you obtain your knowledge and information of the streets and the places where these pipes were laid from a book of complainant company?

A. No, I obtained knowledge of the character of the soil from inquiry.

25. Do you know where any of the gas pipe of the Peoria Gas & Electric Co. are laid in the city of Peoria?

A. I would know if I could refer to the map and to some of my memoranda here.

26. Look at the map of the city of Peoria now shown you and designate where those pipes are laid, if you know?

A. They are laid on Main street, I recollect; I could not give you all of this from recollection but I recollect distinctly that the mains are laid on Main street from Water street out to Bourland street—I think that is where I stopped; also on this avenue running out here—Knoxville avenue—to Arcadia avenue.

27. Are there any gas mains laid in that district in the city of Peoria lying south and west of Spencer street in said city?

A. Yes, I think they are laid on Adams street.

28. Are there any laid in that district above Adams street, between that and Seventh avenue?

A. I could only answer that by reference to my memoranda.

29. Where was your memoranda obtained from?

A. The amount of mains, the places where mains are lo-
276 cated, I obtained from the superintendent of distribution of the Peoria Gas & Electric Company.

30. Then you have no personal knowledge of that yourself?

A. Only as I took them from the records of the company as he gave them to me.

31. What is the character of the soil below the bluffs in the city of Peoria, if you know?

A. The character of the soil as given to me was practically one half of clay and one half sandy soil.

32. Beneath the bluff?

A. I don't know whether it was beneath the bluff or on top.

33. What is the character of the soil on top of the bluff?

A. I could only answer that in the way I have.

34. Is there any gravel there?

A. Some gravel, yes sir; there is gravel in some portions of the city but I could not tell you whether it is on the bluff or below the bluff.

35. Is it not a fact that most of the gas mains of the Peoria Gas & Electric Co. are laid in the alleys in contra-distinction to the street in the city of Peoria?

A. A considerable amount is laid in the alleys.

36. What proportion of the alleys in which mains are laid are paved?

A. I should judge, from what I saw, that the pipes in alleys were generally under pavement.

37. You say there were 2468 service pipes laid in the city of Peoria of an average length of 85 feet?

Ans. Yes sir.

38. And the average cost was 25 cents per foot to lay them?

A. The pipe and the labor of laying it all complete.

39. You further testified as to a further item of $5,000. for
277 service tools. Were not you mistaken and did you not include in the $58615. that $5,000. which you afterwards added for service tools?

Ans. No, I think not.

40. Will 2468 service pipes of an average length of 85 feet at a cost of 25 cents per foot amount to $58,615.?

A. It will if I figured it correctly; I find on computing it again that I have made a mistake; it should be $52,445.; I figured it before at $23.75 each instead of $21.75.

41. Then your estimate in regard to the cost of service pipe should be decreased from the amount of $58,615. heretofore testified to by you to $52,445.?

Ans. Yes sir.

42. Are you sure you have made no other mistakes in your computations?

A. I don't know of any, although you may find one.

43. As a gas expert what amount of Youghioghenay second pool coal would be required to manufacture 2,437,400 cubic feet of gas?

A. 253 tons, 900 pounds.

44. What would be the cost of that amount of coal at $2.75 per ton?

A. $696.99.

45. How much boiler fuel would it take to manufacture 2,437,400 cubic feet of gas made by complainant company in its plant at Peoria?

A. I should figure that at 25 pounds of fuel per thousand feet manufactured; it might not take that much, but I have known plants where it took that much and I have known plants where it did not take more than two thirds or three fourths of it.

46. What would be the amount of bench fuel required to manufacture 2,437,400 cubic feet of gas?

A. Ordinarily I would figure that at about 40 pounds per thousand cubic feet, but to put it in the shape I suppose you want
278 it, it would take 25 to 30% of the coke manufactured.

47. About what would be the approximate cost for purification supplies used by the Peoria Gas & Electric Co. in the making of 2,437,400 cubic feet of gas?

A. One half a cent per thousand.

48. What would be the cost of the enrichers used in a plant like the Peoria Gas & Electric Company's plant, for the manufacture of 2,437,400 cubic feet to enrich the gas to 18 candle power?

A. About a cent a thousand cubic feet.

49. You have testified there were two modern processes for the manufacture of gas? Are those the only modern processes you know of?

Ans. Speaking in a general way, yes sir.

50. Do you know anything of a new process that has lately been introduced in Germany and England for the manufacture of gas?

A. The manufacture of coal gas?

51. For the manufacture of any kind of gas, whether for illuminating or fuel purposes.

A. I don't know to what you refer by your general question.

52. Has there been any process to your knowledge recently introduced in Germany or England for the manufacture of gas?

A. I suppose you refer to the coke oven process; if that is right, then I can answer your question.

53. What do you mean by the coke oven process?

A. The coke oven process is what is known as the by-product oven process for the manufacture of coke and the gas is one of the residuals; it is not a gas process but a coke process, gas becoming the residual in that case; such a plant has been built and is in operation in this country, but to my knowledge there are no such plants in operation in Europe that are manufacturing a gas for general distribution of that character.

279 54. In the manufacture of gas in a plant constructed similar to the gas plant of the Peoria Gas & Electric Co., does not the revenue received from the by-product equal the cost of the gas in the holder, not taking into consideration interest on the investment made for the plant and excluding depreciation?

A. I don't believe there is a gas plant in this country that is receiving for its residuals the cost of its gas in the holder.

55. Then according to your ideas of the manufacture of gas by the by-product oven process it would be practically impossible to manufacture gas for illuminating or fuel purposes?

A. There has as yet been but one plant of that kind built and it has not been established that that plant is a success.

56. Where was that plant built?

Ans. At Boston, Mass.

57. What difference in the cost of gas is represented by the difference of one candle power in the light of gas?

A. In answer to that, I believe I stated my estimate would be one cent per thousand for increasing the cost of manufacture of coal gas to 18 candle power; raising that to 19 candle power it would cost more than one cent per thousand and each candle power higher would increase in greater proportion.

(The MASTER:)

58. Suppose you raised it from 17 to 18 candle power, what would be the cost per thousand cubic feet?

A. I stated that would be one cent but if you were to raise it to 21 candle power I should judge it would be 8 cents per thousand cubic feet.

(Mr. MANSFIELD:)

59. What difference would there be in the cost of water gas rais ing it from 23 candle power to 24?

A. It would be a small fraction of a cent.

60. Which is the cheaper gas to produce, water gas or coa gas?

280 A. It is generally considered in this part of the country a the present time that coal gas is the cheaper.

61. Then how do you account for the difference in the cost o raising coal gas one candle power and the difference in the cost o raising water gas one candle power?

A. In the first place, the different chemical makeup of the gas is quite different, and in the second place, you have all the facilities in making water gas to change the candle power at will from low to high or high to low but in coal gas you have not the facilities for increasing the candle power without additional apparatus and considerable expense in rehandling of the gas.

62. Is it customary in plants like the one constructed in the city of Peoria by the complainant company to use any air in the purifi cation process of their gas?

A. It has become the accepted practice throughout the country to use air in connection with the purification where oxide of iron is used for that purpose.

63. What percentage of air would you use in the purification process in a plant constructed like complainant's plant in the city of Peoria?

A. I would not advise the use of over one per cent.

64. What effect, if any, could be determined by the mixing of one per cent. of air with the gas by testing the gas as to its candle power before and after the mixing of the air with it?

A. There would undoubtedly be a slight decrease of the candle power of the gas by even admitting one per cent. of air but it is scarcely noticeable when you do not exceed one per cent.

(The MASTER:)

65. Do you mean it is scarcely noticeable in its illuminating power?

Ans. Yes sir.

(The SAME:)

66. Does it tend to increase the amount of consumption?

281 A. No sir, it tends to decrease the amount of consumption because air makes the gas heavier and the heavier your gas the greater the tendency to decrease consumption.

(The SAME:)

67. How does the gas plant of the complainant company at

Peoria compare with the one with which you are associated for the prudent and economical manufacture of gas as a gas plant?

Objected to by complainant as immaterial.

A. I think it compares favorably.

(The SAME:)

68. What kind of coal do you use in your plant?
A. The same kind—Youghiogheny coal.

(The SAME:)

69. How much does the coal cost you laid down at your plant?

Objected to by complainant because such matters in other cities cannot be gone into in this case unless the whole cost is gone into and the same investigation is made that we are now making of the complainant company's plant; complainant's counsel have asked the witness nothing on that line and they don't think it proper investigation in this case; the only investigation and only question to try being the Peoria plant so far as the cost of material or cost of anything else is concerned.

(The MASTER:) The witness may answer subject to the objection.

(Mr. IRWIN:) I will have to instruct the witness to refuse to answer.

(The MASTER:)

70. Have you personal knowledge of the cost of the coal Mr. Cowdery?
Ans. Yes sir.

(The MASTER:)

71. Now, under the advise of your counsel in this case, you can answer or not as you see fit.

(The WITNESS:) I decline to answer.

(Mr. MANSFIELD, resuming:)

282 72. What did you testify as to the number of benches there are in a stack in complainant company's plant?
A. Six, I think or seven—no six benches.
73. In making your computation with regard to the cost, did you do it upon the basis of six or seven benches?
A. Six benches.
74. What would be the difference in the cost of a stack containing six benches and a stack containing seven benches?
A. An additional bench would be $3500.
75. How many retorts did you say these benches contain?
A. Nine each.
76. You testified in your direct examination with regard to the

cost of the pipes in and about the complainant company's plant in Peoria. What pipes did you mean?

A. I meant the pipes that connect the different pieces of apparatus in the works, that is, all of the gas mains and their valve connections with the exception of those that usually go with the different pieces of apparatus.

77. Will you take the plat marked Exhibit "1" and designate thereon, if you can, the pipes and the valves making the connections about which you have testified?

A. I can do it as well without the plat. It would be the connections between the hydraulic main which is on top of the stack in the retort house and the first piece of apparatus in the condensing room; that between the condensing room and the purifyers; between the purifyers and meter; between the meter and holder; between the holder and the street governor and the pipes connecting into the street mains at the works.

78. You testified as to the value of the station meter—what do you mean by station meter?

283 A. That is the meter which measures the gas manufactured; it is usually measured before it enters the holder.

79. If the demand in the city of Peoria were limited to 50 cubic feet of gas per year, would you as a gas expert recommend the construction of a gas plant of the kind and character constructed in the city of Peoria by the Peoria Gas & Electric Co.?

A. Yes sir.

Adjourned by agreement until Thursday, November 21, 1901, at 10 o'clock a. m., to meet in the United States circuit court room at Peoria, Ill.

283a *Cost of Gas Plant and Property of Peoria Gas and Electric Company as at September* 1, 1900.

Acct.		Labor.	Material.	Totals.	
1	Salaries of officers	7740.90		7740.90	
2	Accounting department.	6549.46		6549.46	
3	General office sundries.		1903.33	1903.33	
4	Canvassing		581.35	581.35	
5	Insurance				
6	Rentals		1230.00	1230.00	
7	Interest		16546.58	16546.58	
8	Taxes		1228.92	1228.92	
9	Legal exp., loss & damages.	2213.92		2213.92	
10	Stationery, ptg. & postage.		1723.83	1723.83	
11	Stable expenses		2200.52	2200.52	
	General expenses.	16504.28	25414.53		41918.81
13	Generator fuel				
14	Gas coal	997.65	684.34	1681.99	
15	Boiler fuel	85.40	218.23	303.63	
16	Bench fuel	70.50	742.23	812.73	
17	Manufacturing labor	1129.32		1129.32	
18	Manufacturing supplies.				
19	Oil				
20	Enrichers	18.75	294.92	313.67	
21	Purification labor	385.45		385.45	
22	Purification supplies	206.67	934.94	1141.61	
	Manufacturing	2893.74	2874.66		5768.40
23	Distribution labor	366.25	2.20	368.45	
24	Distribution supplies	20.58	289.42	310.00	
	Distribution	386.83	291.62		678.45
26	Mscl. supplies & expenses.		112.17	112.17	
	Miscellaneous		112.17		112.17
32	Land and buildings	51510.16	46812.48	98322.64	
	Plant	51510.16	46812.48		98322.64
33	Extension of mains	40708.36	79372.79	120081.15	
34	Manufacturing plant	13994.22	93485.93	107480.15	
35	New meters	1963.65	11210.61	13174.26	
36	New services	16582.50	21993.44	38575.94	
37	Tools and implements	63.38	5224.99	5288.37	
38	Furniture and fixtures.	304.62	2547.39	2852.01	
	Additions to property.	73616.73	213835.15		287451.88
	Total				434252.35

Exhibit 2. I. C. Pinkney, Master.

283*b* *Operating Statement, Four Months, May 1st to August 31, 1900.*

Gas sold as per consumers' meters..... 15,475,200 c.

Total expenses..... $26413.46

Less residuals:

2,406,869 lbs. coke at $3.25 per ton.....	3901.23	
21,700 " breeze " 1.00 " "	10.85	
29,739 gal. tar " .05 " gal.....	1486.95	
		5399.03
Net actual cost.....		21014.43
Add depreciation.....		9178.44
Total cost.....		$30192.87
Net cost of gas per thousand cu. ft		1.358
Cost, including depreciation, per 1000 cu. ft.....		1.963

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers.....	2741.67	.....	2741.67
2	Accounting department.....	1551.70	.....	1551.70
3	General office sundries.....	.....	$1096.72	1096.72
4	Canvassing.....	1699.88	.....	1699.88
5	Insurance.....	.....	2655.25	2655.25
6	Rentals.....	.....	433.43	433.43
7	Interest.....			
8	Taxes—4 mos.....	.....	828.88	828.88
9	Legal exp. loss & damages.....	.....	432.50	432.50
10	Stationery, ptg. & postage.....	.....	461.63	461.63
11	Stable expenses.....	894.24	.....	894.24
	Manufacturing:			
13	Generator fuel.....			
14	Gas coal.....	1116.99	4712.80	5829.79
15	Boiler fuel.....	9.00	91.24	91.24
16	Bench fuel.....	.....	1337.69	1337.69
17	Manufacturing labor.....	3135.31	.....	3135.31
18	Manufacturing supplies.....	.....	82.70	82.70
19	Oil.....			
20	Enrichers.....	.....	598.68	598.68
21	Purification labor.....	205.75	.....	205.75
22	Purification supplies.....	.....	181.52	181.52
	Distribution:			
23	Distribution labor.....	809.24	.....	809.24
24	Distribution supplies.....	88.21	436.42	524.63
	Miscellaneous:			
26	Mscl. supplies & exp.....	.....	293.26	293.26
	Repairs & renewals:			
27	Repairs & renewals meters.....	2.56	6.66	9.22
28	Repairs & renewals services.....	56.25	2.51	58.76
29	Bench repairs.....	.....	35.80	35.80
30	Gas house & mach'y repairs.....	15.40	183.94	199.34
31	Repairs & renewals mains.....	178.27	37.36	215.63
		12504.47	13908.99	26413.46

EXHIBIT 3. I. C. Pinkney, Master.

283c *Results of Operations of Peoria Gas and Electric Company Four Months, from May 1 to August 31, 1900.*

Total amount of gas sold	15,475,200 cu. ft.
Total expenditures	$26,413.46
Value of residuals made	5,399.03
Depreciation	9,178.44
Interest on cost of plant at 5% per annum	7,237.53
Interest on cost of plant at 10% per annum	14,475.06

Total Cost of All Gas Sold and Cost per Thousand Cubic Feet.

	Total cost.	Cost per thousand cubic feet.
Excluding residuals, depreciation and interest	$26,413.46	$1.706
Excluding residuals, including depreciation, excluding interest	35,591.90	2.300
Excluding residuals, including depreciation and interest at 5% per annum	42,892.43	2.767
Excluding residuals, including depreciation and interest at 10% per annum	50,066.96	3.241
Cost after deducting value of residuals, excluding depreciation and interest	21,014.43	1.358
Cost after deducting value of residuals, including depreciation without interest	30,192.87	1.963
Cost after deducting value of residuals, including depreciation and interest at 5% per annum	37,430.40	2.419
Cost after deducting value of residuals, including depreciation and interest at 10% per annum	44,667.93	2.886

Exhibit 4. I. C. Pinkney, Master.

283d *Results of Operations of Peoria Gas and Electric Company One Year, Septe*
1, 1900, *to August* 31, 1901.

Total amount of gas sold	51,178,300 cubic f
Total expenditures	$60,257.25
Value of residuals made	20,372.91
Depreciation	27,535.42
Interest on investment at 5% per annum	21,712.62
Interest on investment at 10% per annum	43,425.24

Total Cost of All Gas Sold and Cost per Thousand Cubic Feet.

	Total cost.	Cost pe thousan cubic fe
Excluding residuals, and depreciation and interest	$60,257.25	1.
Excluding residuals, including depreciation, excluding interest	87,792.67	1.
Excluding residuals, including depreciation and interest at 5% per annum	109,505.29	2.
Excluding residuals, including depreciation and interest at 10% per annum	131,217.93	2.
Cost after deducting value of residuals, excluding depreciation and interest	39,884.34	.
Cost after deducting value of residuals, including depreciation without interest	67,419.76	1.
Cost after deducting value of residuals, including depreciation and interest at 5% per annum	89,132.38	1.
Cost after deducting value of residuals, including depreciation and interest at 10% per annum	110,845.00	2.

EXHIBIT 5. I. C. Pinkney, Master.

283c *Operating Statement, Year Ending August 31, 1901.*

Gas sold as per consumers' meters:

Light		21,745,500	
Fuel		29,432,800	
			51,178,300 c. f.
Total expenses as per statement below			$60257.25
Less residuals:			
8,733,109 lbs. coke	at $3.25 per ton	$14272.44	
364,133 " breeze	— 1.00 " "	182.09	
3,335 " retort carbon	— .12½ cwt.	20.84	
75,645 gal. tar	at .05 per gal	3782.25	
26,439.1 lbs. ammonia	at .08 " lb	2115.29	
			20372.91
Net actual expenditures			$39884.34

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	3692.50	.....	3692.50
2	Accounting department	4090.60	...	4090.60
3	General office sundries	55.61	658.68	714.29
4	Canvassing	2074.85	101.77	2176.62
5	Insurance	.....	269.75	269.75
6	Rentals	.....	1184.00	1184.00
7	Interest			
8	Taxes (4 mos. 1900—8 mos. 1901 est.)	.....	4428.88	4428.88
9	Legal exp. loss & damages	.....	5190.10	5190.10
10	Stationery, ptg. & postage	.....	3093.30	3093.30
11	Stable expenses	1297.35	.....	1297.35
	Manufacturing:			
13	Generator fuel			
14	Gas coal	.....	15141.67	15141.67
15	Boiler fuel	.....	1193.06	1193.06
16	Bench fuel	.....	3669.15	3669.15
17	Manufacturing labor	8286.12	.....	8286.12
18	Manufacturing supplies	.....	535.10	535.10
19	Oil			
20	Enrichers	.....	694.30	694.30
21	Purification labor	186.65	.....	186.65
22	Purification supplies	36.50	2.70	39.20
	Distribution:			
23	Distribution labor	1969.46	.....	1969.46
24	Distribution supplies	365.40	533.90	899.30
	Miscellaneous:			
26	Mscl. supplies & expenses	92.53	198.61	291.14
	Repairs & renewals:			
27	Repairs & renewals meters	162.69	64.24	226.93
28	Repairs & renewals services	41.33	23.48	64.81
29	Bench repairs	12.04	60.47	72.51
30	Gas house & mach'y repairs	346.87	430.63	777.50
31	Repairs & renewals mains	40.62	32.34	72.96
		22751.12	37506.13	60257.25

EXHIBIT 6. I. C. Pinkney, Master.

City.	Population.	Annual output in million cu. ft.	Number of meters.	Price.				Candle power.	Per cent. sold for fuel.	Number public lamps.
				Light.		Fuel.				
				Gross.	Net.	Gross.	Net.			
New York city N. Y. (1)	3,437,202	.....	.....	$1.00	$1.00	$1.00	$1.00	24	35	1800
New York city N. Y. (2)	.....	16,000	489,455	1.00	.....	1.00	.....	23–28	.....	14000
New York city N. Y. (3)	.....	2,500	80,000	1.00	.....	.....	.....	28	35	3400
New York city N. Y. (4)	.....	.....	.....	1.00	1.00	1.00	1.00	24		
New York city N. Y. (5)	.....	150	6,300	1.00	1.00	1.00	1.00	22	25	2900
New York city N. Y. (6)	.....	.....	.....	1.00	.....	.....	.....	24–26	....	1912
Chicago, Ill. (1)	1,698,575	303	9,600	1.00	.90	.....	.90	26	40	
Chicago, Ill. (2)	.....	7,426	300,077	1.10	1.00	1.00	.....	25	27	24980
Philadelphia, Pa. (1)	1,293,697	95	3,300	1.00	1.00	1.00	1.00	.....	.....	80
Philadelphia, Pa. (2)	.....	5,100	177,118	1.00	1.00	1.00	1.00	28	.....	200094
Brooklyn, N. Y. (1)	1,166,582	5,000	163,000	1.05	1.05	1.05	1.05	28		9035
Brooklyn N. Y. (2)	.....	140	2,760	1.00	.....	1.00	.....	28	20	558
St. Louis, Mo. (1)	575,238	40	.....	1.10	1.00	.90	.80	20	58	1216
St. Louis, Mo. (2)	.....	1,200	.....	1.10	1.00	.90	.80	22	39	
Boston, Mass. (1)	560,892	1,005	.....	1.00	1.00					
Boston Mass. (2)	.....	1,085	29,337	1.00	.....	1.00	.....	18	40	632
Boston Mass. (3)	.....	738	25,305	1.00	.....	1.00	.....	18	.. ..	3419
Boston Mass. (4)	.....	150	6,439	1.25	1.10	1.00	.....	18		
Boston Mass. (5)	.....	205	10,543	1.00	.....	1.00	.....	18	.....	2201
283g Boston, Mass (6)	.....	58	2,697	1.50	1.40	1.50	1.40	18	.. ..	359
Boston, Mass. (7)	.....	102	4,000	1.20	1.00	1.20	1.00	18		
Boston, Mass. (8)	.....	231	11,274	1.00	.....	1.00	.....	18	.....	169
Boston, Mass. (9)	.....	133	5,308	1.00	.....	1.00	.....	18	.....	432

Cleveland, O. (1)	381,768	1,200	25,000	.75	.75	.75	.75	18	35	3500
Cleveland, O. (2)	.....	.....	.....	.75	.....	.75				
Buffalo, N. Y. (1)	352,387	578	15,000	1.20	1.00	1.20	1.00	19	8	5900
Buffalo, N. Y. (2)	.....	.....	.....	1.20	1.00	1.00				
San Francisco, Cal. (1)	342,782	246	3,750	1.00	1.00	1.00	1.00	19	20	
San Francisco, Cal. (2)	.....	320	10,000	1.40	1.40	1.40	1.40	21	25	
San Francisco, Cal. (3)	.....	900	.....	1.40	1.40	1.40	1.40	23	37	4513
Cincinnati, O	325,902	3,819	30,000	.85	.75	.60	.50	18	12	2300
Pittsburg, Pa (1)	321,616	433	11,200	1.20	1.00	.....	.....	.....	22	
Pittsburg, Pa. (2)	.....	20	900	1.30	1.20	1.30	1.20	19.5	.....	35
New Orleans, La	287,104	.....	.....	2.50	.....	1.50	1.25			
Detroit, Mich	285,704	650	41,000	1.15	1.00	.90	.80	21	50	
Milwaukee, Wis.	285,315	1,100	46,000	1.20	1.00-.80	1.00	.80-.60	20	45	2425
Washington, D. C	278,718	1,135	29,600	1.25	1.10	1.25	1.10	25	.....	6460
Newark, N. J	246,070	1,130	42,819	1.10	1.00	1.10	1.00	22	40	4597
Jersey City, N. J	206,433	975	48,313	1.10	1.10	1.10	1.10	25	20	1329
Louisville, Ky. (1)	204,731	40	3,500	.....	.....	.55	.495	.....	100	
283*h* Louisville, Ky. (2)	.....	320	17,250	1.25	1 20	.80	.75	18	30	
Minneapolis, Minn.	202,718	.....	12,040	1.40	1.20	1.40	1.20	25	.....	4936
Providence, R. I.	175,597	708	28,183	1.10	1.10	1.10	1.10	19 to 20	40	784
Indianapolis, Ind	169,164	260	20,919	.....	1.00	.....	.....	18		
Kansas City, Mo	163,752	800	21,120	1.10	1.00	1.10	1.00	24	50	2117
St. Paul, Minn.	163,065	320	8,500	1.50	1.30	1.50	1.30	23	25	2600
Toledo, O	131,822	250	9,000	1.10	.95	.....	.70	20	25	
Allegheny, Pa	129,896	200	7,362	1.20	1.00	.....	.....	22		
Columbus, O.	125,560	185	5,618	1.10	1.00	1.10	1.00	19	1	
Worcester, Mass	118,421	275	9,566	1.20	1.00	1.20	1.00	20.5	.....	509
Syracuse, N. Y	108,374	210	13,026	1.50	1.30	1.00	.....	19	33	
New Haven, Conn	108,027	380	17,000	1.10	1.00	1.10	1.00	21	33	946
Paterson, N. J	105,171	333	14,280	1.25	1.15	1.25	1.15	24 to 26	30	529
283*i* Fall River, Mass	104,863	190	8,547	1.25	1.15	1.25	1.15	24	30	110
St. Joseph, Mo.	102,979	170	5,500	1.25	1.00	1.25	1.00	20		
Omaha, Nebr	102,555	285	9,755	1.45	1.35-1.15	.....	.....	25	48	952
Los Angeles, Cal	102,479	191	7,435	1.50	1.50	1.50	1.50	20	40	
Memphis, Tenn	102,320	170	6,000	1.40	.....	1.15	.....	20	35	
Lowell, Mass	94,969	348	12,711	1.20	1.00	1.20	1.00	20.6	.....	1051
Albany, N. Y.	94,151	32	.....	.....	1.50	....	1.25	26	15	
Cambridge, Mass.	91,886	300	13,442	1.20	1.00	1.00	.....	18	.....	3850
Portland, Ore.	90,426	60	2,600	2.50	2.12	1.65	.....	18 to 20		

Gas Statistics in All Cities of 50,000 Population and Upwards in the United States—Continued.

City.	Population.	Annual output in million cu. ft.	Number of meters	Price.				Candle power.	Per cent. sold for fuel.	Number public lamps.
				Light.		Fuel.				
				Gross.	Net.	Gross.	Net.			
Atlanta, Ga.	89,872	300	8,350	$1.10	$1.00	$1.10	$1.00	21	40	
Grand Rapids, Mich.	87,565	320	10,900	1.20	1.00-.80	1.20	1.00-.80	20	40	
Dayton, O.	85,333	.....	.....	1.00	.85	.....	.....	21	.....	1222
Richmond, Va.	85,050	260	7,057	1.00	1.00	1.00	1.00	22.5		
Nashville, Tenn.	80,865	165	6,000	1.10	1.00	1.10	1.00	16	40	520
Seattle, Wash.	80,671	110	5,150	2.00	1.50	2.00	1.50	18	35	140
Hartford, Conn.	79,850	250	11,000	1.10	1.00	1.10	1.00	22	35	
Reading Pa.	78,961	105	9,999	1.50	1.35	1.50	1.35	24-26	30	430
Wilmington, Del.	76,508	230	8,046	1.10	1.00	1.10	1.00	20.3	28	517
Camden, N. J.	75,935	182	.....	1.00	.....	.....	.....	20	.....	484
Trenton, N. J.	73,307	220	6,000	1.00	.....	1.00	.....	21	.....	276
Bridgeport, Conn. (1)	70,996	.....	5,000	1.50	1.25	1.25	.....	20	.....	132
Bridgeport, Conn. (2)	.....	200	1,100	.....	.....	.25	to .50	.....	100	
Lynn, Mass.	68,513	200	7,306	1.20	1.00	1.20	1.00	19.5	25	
Oakland, Cal.	66,960	160	12,000	1.50	.....	1.25	.....	22.5	30	
Lawrence Mass.	62,559	150	5,084	1.10	1.00	1.10	1.00	20	30	9
283) New Bedford, Mass.	62,442	84	3,863	1.40	1.12	1.40	1.12	19	35	647
Des Moines, Ia.	62,139	150	6,400	1.30	1.20	1.30	1.20	24	50	710
Springfield, Mass.	62,059	172	8,173	1.20	1.05	1.20	1.05	20		
Troy, N. Y.	60,651	175	7,000	1.50	.....	1.25	.....	25	35	250
Evansville, Ind.	59,007	100	5,000	.....	1.00	.....	.90	18	20	425
Manchester, N. H.	56,987	98	5,050	1.40	1.25	1.40	1.25	20	25	63
Utica, N. Y.	56,383	90	3,800	.....	1.50	1.50	to 1.00	24	50	
Peoria, Ill. (1)	56,100	60	2,000	1.25	1.15	.85	.75	18-19	50	
Peoria, Ill. (2)	.....	100	.....	.....	1.00	.....	1.00	22	25	
Charleston, S. C.	55,807	105	3,200	1.60	.....	1.20	.....	18	14	863

Savannah, Ga	54,244	160	4,356	1.50	1.40	1.50	1.40	25	40	
Salt Lake City, Utah	53,531	72	.....	1.90	1.71	1.40	1.26			
San Antonio, Tex	53,321	17	600	1.50	1.25	1.50	1.25	18	70	
Duluth, Minn	52,969	36	1,691	1.35	1.25–1.15	1.25	1.00	20	43	
Erie, Pa	52,733	47	1,400	1.10	1.00	.....	.60	21	10	641
Elizabeth, N. J	52,130	108	3,900	1.50	1.25	1.50	1.25	20	.....	900
Kansas City, Kan	51,418	74	3,217	1.10	1.00	1.10	1.00	25	65	53
Harrisburg, Pa	50,167	75	6,538	1.70	1.60	1.35	1.25	25	29	

NOTE.—In Detroit, Mich., Louisville, Ky., Toledo, Ohio, and Erie, Pa., the price charged for gas for fuel purposes is determined by the price of natural gas. Company No. 2 in Louisville distributes natural gas or a mixture of natural and manufactured gas.
Company No. 2 in Bridgeport, Conn., distributes uncarburetted gas very low in heat units and candle power.

EXHIBIT "7." I. C. Pinkney, Master.

283*k* EXHIBIT H-8. I. C. Pinkney, Master.

No. 1.

Peoples Gas and Electric Company, Peoria, Ill.

Classification of Accounts Covering Expenditures.

Instructions.

In effect May, 1899.

283*l* No. 1.

Peoples Gas and Electric Company, Peoria, Ill.

Classification of Accounts Covering Expenditures.

Instructions.

In effect May, 1899.

Peoples Gas and Electric Company, Peoria, Ill.

Classification of Accounts.

General expense.

No. 1. Salaries of officers.—Salaries of all general officers, including president, secretary, treasurer and superintendent, *except* as otherwise provided for.

No. 2. Accounting department.—Salaries of assistants to treasurer, cashier, bookkeepers and all clerks employed in the accounting department, including salary of storekeeper.

No. 3. General office sundries.—Includes all expenses of officers and other incidentals, telephone and petty office expenses and small supplies for office.

No. 4. Canvassing.—The compensation for the procurement of customers. The salaries of soliciting agents and their expenses.

283*m* No. 5. Insurance.—The cost of insuring property against fire; all accident, steam boiler, or employer's liability and fidelity.

No. 6. Rentals.—Includes rentals of offices, telephones and all other rentals.

No. 7. Interest.—Includes all interest charges.

No. 8. Taxes.—Includes taxes of all descriptions.

No. 9. Legal expenses and loss and damage account.—Includes salaries and fees of all sorts; of attorneys' and all legal and court expenses, whatever the cause of the litigation may be, and losses resulting from injury to persons or damage to property.

No. 10. Stationery, printing and postage.—Includes all expenses for stationery, printing and postage.

No. 11. Stable expenses.—Cost of all horses, wagons, harness, shoeing, repair and feed bills on account of same, and wages of hostler.

No. 12. Discounts.—Covers all discounts on gas bills (according to rules of the company) allowed for payment of same on or before the 12th of the month following that in which gas was consumed, and special discounts allowed by general manager.

Manufacturing.

No. 13. Generator fuel.—Includes the cost of all coke and coal, used in manufacture of water gas, expenses of handling same, and freight.

No. 14. Gas coal.—Includes cost of same as determined by storeroom, unit, and cost of handling into retorts.

No. 15. Boiler fuel.—Includes cost of coal or other substances used under boilers, and cost of handling same.

No. 16. Bench fuel.—Includes cost of coal, coke or tar used for firing benches, together with cost of handling same.

No. 17. Manufacturing labor.—Includes wages of engineers, firemen, gas makers and labor of all employés in and about the works for the manufacture of gas not otherwise classified.

No. 18. Manufacturing supplies.—Includes cost of lubricating oils, waste, packing, etc., used in and about engine room and
283a generator room, together with freight and cartage.

No. 19. Oil.—Cost of naphtha or gas oil, together with freight on same, if paid by the company, and cost of handling.

No. 20. Enrichers.—Includes cost of oil, naphtha, or coal used for this purpose, together with cost of handling same.

No. 21. Purification labor.—Cost of all labor in handling of purifying materials in the manufacture of gas, and work in and about the purifying house.

No. 22. Purification supplies.—Cost of all materials used for purifying, together with freight, cartage and handling.

Distribution.

No. 23. Distribution labor.—Includes car fares and wages of meter readers, car fares and wages of men engaged in the distribution of bills, attending to frozen service mains, car fares of collectors and their wages, cleaning tips and pumping drips.

No. 24. Distribution supplies.—Tips and supplies furnished customers gratis, and labor and expense of removing and setting old meters.

No. 25. Street lamp operating.—Cost of all labor and material used in lighting, extinguishing and maintaining street lamps.

Miscellaneous.

No. 26. Miscellaneous supplies and expenses.—This includes al small supplies and renewal of tools which may be furnished to or

incurred *at works*, which cannot be charged to repairs or renewals and includes cleaning engine room, generator room, yard, etc.

Repairs and renewals.

No. 27. Repairs and renewal of meters.—All labor, materials and car fares used in this connection.

No. 28. Repairs and renewal of services.—All labor, material and car fares used in this connection.

No. 29. Bench repairs.—Includes cost of materials and labor used in this connection.

No. 30. Gas house and machinery repairs and renewals.—All labor and materials used in this connection.

283o No. 31. Repairs and renewal of mains.—All labor, materials and car fares, also cost of removing and replacing street pavement.

Plant account.

No. 32. Land and buildings.—Cost of all real estate purchased including fees for examination of title and guarantee policies.

Additions to property.

No. 33. Extension of mains.—Cost of all labor and material and expenses connected therewith; *new work only*.

No. 34. Manufacturing plant.—Includes cost of retorts, generators, purifiers, pumps, exhausters, holders, separators and other apparatus used in the manufacture and storage of gas and its residuals.

No. 35. New meters.—The storeroom unit price of all meters taken from stock for setting.

No. 36. New services.—Cost of all labor and material and expenses connected therewith, which are to be furnished gratis.

No. 37. Tools and implements.—New tools only.

NOTE.—Tools and implements bought to replace those old or worn out, should be charged to the proper operating or repair and renewal account.

No. 38. Furniture and fixtures.—First cost of all office furniture and fixtures. Renewals and repairs to be charged account No. 3

Miscellaneous accounts.

No. 39. Accounts receivable.—This account covers the bills amounts for service sales, stove sales, store-room sales, coke sales, tar sales, ammonia sales and fitting sales.

No. 40. Sales account.—This account will be debited with all material used and labor employed in mercantile sales and job work and credited with the cost of completed work billed. Such completed work will be reported to the general office, by abstract, a

the close of the month, giving the cost of the work and the billed amount charged to customers.

283*p* No. 41. Store-room.—This account represents all materials purchased, and the balance of the account represents the materials on hand. All purchases for stock except as otherwise provided for, to be charged this account. This account to be credited with all deliveries from store-room and the respective accounts for which the deliveries were made, debited.

All coke, breeze, tar, ammonia or other residuals from gas making are to be debited to this account, and this account to be credited with the cost of same when sold or used by the company.

General Instructions.

Time of employés.

Instructions regarding time-books.—Time-books are so ruled as will permit the distribution of each employé's time as the labor is performed. Each company classification account or working order bears its individual number. Each working order will be given a specific number, by which it will always be known until the work is completed.

Time-books will be used for the time returns of all employés, except officers and office men.

These books will be supplied to the proper foreman or deputized assistants. Each foreman or assistant must keep a perfect report of the exact time of all men placed under his charge, including his own.

283*q* Each foreman will use extreme care in reporting the exact number of hours the men under him have labored on any company work, stating specifically what has been done, in order that the labor performed against the proper working order number or account number for which the work was done can be properly distributed, together with any car fare that may properly be included; all extra time to be calculated in regular labor hours, *i. e.*, if an employé works one hour overtime allow him the extra hours in the proper day against the proper distribution. *No overtime allowed except by written order of general manager.*

The salaries of all officers and heads of departments, and clerks in general office, will be assembled by the treasurer.

Semi-monthly time-books, duly approved by foremen, should be in the hands of the general manager on the morning of the 16th for the first half of the month, and on the first day succeeding the first day of the following month for the second half of the month, to be by him transmitted to the auditor.

Semi-monthly pay checks will be delivered on the 20th and the 5th day of each month, provided the 20th or 5th day of month does not fall on a holiday or Sunday, in which event payment will be made on the day following such holiday or Sunday.

Time vouchers given to semi-monthly employés discharged, laid off, or to correct errors for the previous semi-month, must be presented to the general manager for approval before the cashier will honor the same for payment. Foremen should be very careful to properly charge the time of semi-monthly employés to proper accounts. When a time voucher is issued it should state upon its face the length of time and amount of pay the employé is entitled to and the account to which it is to be charged, and the *same period of time and same paid amount and same distribution* should be entered on the *next semi-monthly time-book*, stating on said time-book the words "Paid by time voucher," giving the time voucher number.

The auditor will sign all pay checks and the general manager and president will approve all time of employés before entry on company's books.

All changes affecting semi-monthly time-books assembled
283r in the accounting department must be presented to the auditor, duly approved by proper foreman and general manager, at least two days before semi-monthly payment is made, otherwise such changes will not be considered as taking effect until the following semi-monthly payment is made.

Disposition of invoices.

Foremen will immediately send to the general manager all invoices or statements which they may receive, referring in any sense to the following accounts:

No. 5. Insurance.
No. 6. Rentals.
No. 7. Interest.
No. 8. Taxes.
No. 9. Legal expenses. Loss and damage account.

No writing or stamp impressions should be made on such invoices or statements, the approval of same coming under the jurisdiction of the general manager or other executive officer.

All invoices for petty supplies for following accounts should be sent direct to the general manager as soon as received:

No. 3. General office sundries.
No. 4. Canvassing department (petty supplies or petty expenses).
No. 10. Stationery, printing and postage.

The general manager after checking such invoices against the corresponding requisition will stamp such invoices with his charge direct stamp, and forward invoices so stamped to the clerk originally ordering the supplies. The clerk, immediately upon receipt of supplies, will approve such invoices, if correct, and return the same at once to the general manager, who in turn will transmit direct to the treasurer. The general manager should never send such invoices through the store-room.

All petty expense bills of clerks concerning any of the foregoing accounts, should be properly made out on petty cash slips. Such petty expense bills should always be approved by the clerks and

submitted to the general manager for approval, before cashier will honor same for payment.

283*s* Invoices covering material purchased for company accounts.

All invoices covering materials purchased for any company account chargeable to any working order, or account number (except such account numbers as are otherwise provided for as above) should be sent direct to the general manager, who will check such invoices with corresponding requisitions. The general manager will stamp such invoices with store-room stamp, and transmit to general foreman in charge of the work, who will approve the invoices, if material, as quoted, has been received and is to be used for the work specified. Such invoices will be returned at once to the general manager, who will approve prices quoted, and immediately send same to the store-keeper for proper charge on company account supply tickets. Invoices should always be attached to the supply tickets covering the charges appearing on the invoices, before supply tickets and invoices, as approved by general manager, are submitted to the accounting department.

Credit invoices or bills for goods returned should be handled and checked, and credit shipping tickets issued in the same manner as debit invoices.

Invoices covering additions to stock.

All invoices covering additions to stock in the store-room should be sent direct to the general manager. The general manager will check such invoices with corresponding requisitions, and will stamp such invoices with the store-room account stamp, and forward same immediately to store-keeper, who will check as to receipt of goods called for by invoices. The store-keeper will return such invoice properly checked to the general manager, who will approve, if correct, and immediately transmit to treasurer. Invoices covering purchases for *stock* should never be charged on supply tickets. All charges on company books to the ledger account, known as "store-room account," to be made by the accounting department.

283*t* NOTE.—As all supply tickets that are issued (except for freight or cartage) become a credit to the ledger account known as "store-room account," the general manager should be very careful that no supply ticket is ever issued for any charge (except freight and cartage and such charges as interest working orders) that does not specifically represent material that could at any time be inventoried as part and parcel of the stock in the store-room.

The most careful and prompt attention should be given to the handling of invoices. The foremen should permit no invoices to remain on their desks unattended to. It is of the utmost importance that all the liabilities of the company should, at the earliest

possible moment, be placed on the company's books; and great c
should be taken by all foremen to have every invoice concern
any one month's accounts in the hands of the general manager
or before the third day of each month for the month previous.
excuse will be accepted for any exception to this rule, except in
case of disputed bills, and such disputed bills should at once rece
prompt attention with a view to immediate adjustment.

Store-room.

Materials purchased.—The general manager is authorized to p
chase such general supplies as are requisite to keep the necessa
stock in the store-room, and all approved invoices for petty supplies
expenses not chargeable to a working order, and which are chargea
to following accounts (Nos. 3 to 11 inclusive), should not go throu
store-room, unless they represent a debit to "store-room accou
but should be sent after proper approval, direct to the general m
ager. Invoices which *do not represent* materials purchased, exc
for freight and cartage chargeable to specific work, should never
through the store-room, but should always be sent, after proper
proval, direct to the general manager. All approved invoi
chargeable to a working order's number should always be s
through the store-room. (See page 14 disposition of invoices.)

Rules governing delivery of material from store-room.

Foremen or properly deputized assistants will order from sto
room such material as may be required for their respective depa
ments, stating specifically on the order the working ord
283*a* number or company classification, account number, to whi
such material is to be charged. Foremen will be held
sponsible for all orders. Orders issued by subordinates shou
always bear the signature or approval of the foreman, as per rul
of the company, otherwise they will not be accepted by the gener
manager.

Orders for material will go to the general manager, who will i
mediately O. K. same if proper to do so, and immediately transm
to the store-room.

*The general manager is expected to question the propriety or necessi
of all orders, and is authorized to refuse all orders not in line wi
economy or the policy of the company.* The store-keeper will at on
furnish the material desired, on supply ticket, being careful to fi
out all requirements of said supply ticket, as per its form, notin
particularly on the supply ticket the working order or classificatio
number in the original order.

In case the goods are not in stock, the general manager will issu
a requisition from requisition book, covering each specific order, o
such outside parties as may be necessary.

When such material is received, the amount of invoice will b
charged through store-room to proper working order number

direct to proper company classification number or to store-room, and then charged to the working order numbers or accounts for which it was ordered.

When unused material is returned to the store-room on account of any working order or company classification, the store-keeper will at once issue a credit return ticket, each credit ticket corresponding to material returned. The allowed amounts of such credit return tickets are a debit to store-room, and a credit to working order number or company account interested.

Upon close of business for the day the storekeeper will send all supply tickets and all credit tickets issued during the day to the superintendent, who will "O. K." and forward to the general manager, who will "O. K." same and forward to treasurer.

Special instructions governing material and labor.

283e Rule 1.—Working order requisition stating character and probable cost of work to be performed must be sent to superintendent for approval and working order signed by general manager will be issued authorizing the work. All labor and material should be charged to the working order number until the work is completed, and when completed the foremen should sign, and working order be sent to the office of the general manager. Foremen will issue supply orders direct on the general manager, or foreman will issue foreman's orders direct on the store-keeper for such material as may be necessary for the work to be charged to any particular working order number. No approval of the general manager is required on supply orders governing the use of materials chargeable to any working order which has been already approved by him. Working orders will only be issued where labor with material are *both* required or labor *alone* is required to complete a specified undertaking.

Rule 2.—Supplies required, which do not interest working orders or such company accounts as come under other rules, may be had on application to the general manager, who will issue necessary requisition for same and pass invoices through store-room, as per instructions on page 14, disposition of invoices. Store-keeper will notify accounting department of issues as stated above by proper journal entry covering account to be charged.

Special rule.—In case of any urgent repairs or sudden break in machinery in the company's plant, or street service requiring immediate attention, foremen in charge are authorized to proceed immediately to do the urgent work or repair the break, they obtaining from the general manager, as soon as possible, however, a working order covering the necessary work to be performed, all material and labor being charged to such specific working order number. Foremen will be expected to justify their action in such cases to the general manager if called upon to do so.

Permanent working orders.

Permanent working orders do not include any authority fo
curring expenses at any one time exceeding ten dollars, exce
especially provided for by authority or approval of ge
283*w* manager. Permanent working orders only cover ex
and repair, and renewal accounts.

Permanent working orders will be distinguished from the
nary working orders by the letter "P" following the working
number to which the charge is to be made.

283*x* EXHIBIT 9. I. C. Pinkney, Master.

To the special commissioner:

In order to save the time and expense incident to making fu
formal proofs of the cost of the construction and operation o
plant of the Peoria Gas and Electric Company and to avoi
necessity for introducing several thousand vouchers.

It is here stipulated and agreed by and between the respe
parties by their respective counsel, that the witness F. W. Little
testify as to the total amount of expenditures made by the
plainant company in and about the construction and operati
the gas plant of said company from the time of the organizati
the complainant company to September 1, 1901, as shown b
vouchers and books of the company, stating the totals of the va
accounts under which said expenditures are entered;

It is further stipulated that in the event that said Little shal
tify that said totals are true totals, as shown by the books and v
ers of said company, and represent all the actual expenditures
by said company during said period in and about the constru
and operation of the gas plant of said company, and that the v
ers, duplicate vouchers and sub-vouchers showing all said exp
itures in detail are present in court for inspection and examin
by the special commissioner and counsel for the parties, then
in that event no objection shall be made by the defendant, t
competency of such evidence, but it shall be and hereby is
mitted that such expenditures were in fact made and that the
expenditures are charged to the proper accounts.

283*y* It is further stipulated that for the purpose of attac
and verifying such expenditures, or any of them, the
vouchers, duplicate vouchers and sub-vouchers, throughout
pendency of this suit before said special commissioner, shall be
ject to examination by counsel for defendant or by any qual
public accountant in his behalf, at all reasonable times during
ness hours at the office of the company in Chicago, subject to
regulations as may be imposed from time to time by the court.

283: Vol. 2, Schedule "B." I. C. Pinkney, Special Master.

Filed Jun- 3, 1903. Marshall E. Sampsell, Clerk.

283& STATE OF ILLINOIS, } ss:
Peoria County, }

In the Circuit Court of the United States for the Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY } In Chancery. Vol. 2.
vs.
CITY OF PEORIA. }

Index to Witnesses, Volume 2.

Name.	Direct.	Cross.	Re-D.	Re-cross.
Diall, Gideon H.....	284	286	286	290
Eustis, John H.....	291	307	.....	.....
Pratt, Edward G.....	330	353	383	.....
Brown, Harvey W.....	385	441	.....	.....
Douglas, David	454	477	488	.....
Case, L. N.....	490	494	.....	.....
Lathrop, A. P.....	495	502	506	507
Mitchell, K. N.....	509	515	522	525
Kellogg, Leonard G.....	526	539	545	.....
Knapp, Isaac N.....	547	570	575	579

Testimony taken in the above entitled cause before Judge I. C. Pinkney, special commissioner, at Peoria, Illinois; Minneapolis, Duluth, and St. Paul, Minn., and at Kansas City, Mo., on the several dates set forth in the following pages.

Mr. W. T. Irwin, Mr. E. C. Ritcher and Mr. W. T. Abbott, appearing for the complainant.
Mr. Henry Mansfield, appearing for the defendant.

284 United States circuit court room.

PEORIA, ILL., THURSDAY, *Nov.* 21, 1901—10 a. m.

Parties met pursuant to adjournment.
Present: Judge I. C. Pinkney, special commissioner Mr. W. T. Irwin & Mr. E. C. Ritsher appearing for complainant. Mr. Henry Mansfield appearing for defendant.
On account of the absence of witnesses, the hearing was adjourned by agreement until Friday, November 22, 1901, at 9:30 a. m.

United States circuit court room, Government building.

PEORIA, ILL., FRIDAY, *November* 22, 1901—9:30 a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin appearing for complainant. Mr. Henry Mansfield, appearing for defendant.

On account of the absence of Mr. E. C. Ritsher, of counsel for complainant, and on account of the absence of witnesses, the hearing was adjourned by agreement until Saturday, November 23, 1901, at 9:30 a. m.

United States circuit court room, Government building.

PEORIA, ILL., *November* 23, 1901—9:30 a. m.

Parties met pursuant to adjournment.

Present: I. C. Pinkney, special commissioner. Mr. W. T. Irwin & Mr. E. C. Ritsher, appearing for complainant. Mr. Henry Mansfield appearing for defendant.

GIDEON H. DIALL, called on behalf of complainant, being first duly sworn, deposeth and saith:—

Direct interrogatories by Mr. IRWIN:

1. State your name and business.

285 A. Gideon H. Diall; my business at present is a newspaper man.

2. With what newspaper are you connected?

A. Chicago-American.

3. How long have you been connected with that paper?

A. Since about the middle of last October.

4. In what capacity?

A. In the capacity of a man who is handling the gas news for the paper.

5. You have been furnishing that paper with the gas news during that period, have you?

A. Part of the news, not all.

6. Has all the gas news which has been furnished to that paper during that period been furnished by you or under your direction?

Ans. Not all of it, no sir.

7. Has it largely been under your control?

Ans. No sir.

8. Who has control of the gas news furnished that paper?

A. The man that controls the gas situation in the American is A. M. Lawrence, the managing editor of the Chicago American; he is also the president, I believe, of the Chicago-American Co.—stock company.

9. Are you the same gentleman that attended this hearing in Chicago on the 15th of the present month, sat with counsel for the City of Peoria and assisted in the examination of witness?

Mr. MANSFIELD: I object to this examination as immaterial and incompetent and I do not think the master ought to allow it to go on unless counsel states for what purpose the investigation is being made.

The MASTER: I cannot tell what the purpose of the investigation is. The witness may answer subject to the objection.

286 A. I don't remember the date but I was with Mr. Mansfield; so far as I remember I think the only question is as to the date.

Cross examination by Mr. MANSFIELD:

1. Did you personally propound any questions to any witness that appeared on the stand at that time?

A. I did not.

2. Read the article now shown you and state whether or not you were the person that furnished that article to the Chicago-American for publication?

A. I did not write it or furnish the facts from which it was written; as a matter of fact, the first I knew of the article in question was from reading it in the paper after it was published. (And it happened that the day this article was published I was out of the city of Chicago.)

Defendant's counsel objects to that part of the foregoing answer enclosed in brackets as not responsive and moves the court to exclude it.

Re-direct examination by Mr. IRWIN:

1. Where were you on that day?

Mr. MANSFIELD: I object to the question as immaterial, incompetent, not proper re-direct and direct the witness not to answer.

A. On the advice of the city attorney I refuse to answer the question.

2. How do you know you were out of the city on the date that article was published?

A. Because I remember the date and the paper in which the article appeared, and knowing the date of the paper I know I was out of the city on that date.

3. What date was it?

287 Objected to as immaterial and incompetent.

A. At this time, I could not answer.

4. How do you know it was on that date that you were out of the city if you cannot tell the date?

Objected to same grounds.

A. I say that at the time I read the article I noticed the date of the paper in which it appeared but the date I have now forgotten, the fact remains in my mind, however, that after noticing the date of the paper in which it appeared I said to myself at the time: "I wonder who wrote this," because I was out of the city. It came to me instantly that I was out of the city after seeing the date of the paper.

5. Do you still refuse to state where you were on that day?

A. I refuse to answer that question on the advice of the city attorney.

6. That article appeared in one of the regular issues of that paper, did it not?

A. I could not tell you whether it was an extra or regular issue.

7. But the fact is that it did appear in the Chicago-American, the paper with which you are connected?

Ans. Yes sir; but let me say here that so far as the gas situation for the Chicago-American is concerned—interrupted.

Mr. MANSFIELD: Just answer the questions propounded to you and nothing else.

The WITNESS: All right sir.

8. You say you did not ask the witnesses any questions during their examination in this case, did you suggest any questions to be asked or form any questions to be asked by counsel for the city.

Ans. I may have suggested the form of some questions to him.

288 9. And the substance of the questions?

A. I might have, yes sir.

10. How long were you engaged in the business of suggesting questions or the form or substance of questions to be asked the witnesses during the recent hearing of this case at Chicago?

A. Do you mean on the days I appeared at the hearing in Chicago?

11. How long were you engaged in that?

A. I could not say.

12. Have you no judgment as to the length of time?

A. I could not say.

13. Didn't you come into the room about 11 o'clock in the morning and remain the balance of the day?

A. As to the question of time, I have forgotten; I cannot recall the exact hours.

14. Did you come in before or after lunch time that day?

Mr. MANSFIELD: I object; it seems to me the master ought to make some ruling on this matter for it is immaterial and encumbers the record.

Mr. RITSHER: Why don't you admit, then, that he came in at 11 o'clock and stayed the balance of the day.

Mr. MANSFIELD: Certainly, I will.

Complainant's counsel in connection with the testimony of this witness offers in evidence the article in question, appearing on page 10 of the Chicago-American of date November 15, 1901; also, offers in evidence another article appearing in the same paper on page 4 of date of November 19, 1901.

Objected to as immaterial, incompetent, irrelevant and not proper re-direct examination.

The MASTER: The articles may be admitted subject to the objection.

288¼ Whereupon said articles were read to the master in the words and figures following to-wit:

Chicago American, November 15, 1901.

Gas trust must pay cash for favors.

Vice President Little testifies that desired legislation costs the Peoria companies ten per cent. of profits.

Francis W. Little, vice president of the Peoria gas trust, was yesterday subjected to cross-examination before the special chancery court in the Chicago National Bank building, where is being tried the rights of the citizens of Peoria to legislate for 75 cent gas.

The official of the trust held tenaciously to the story and figures he gave in the direct examination. Henry Mansfield, city attorney of Peoria, went deep into the affairs of the gas company and demanded to know upon what basis Mr. Little's figures were given. The examination of the witness, it is said, may consume the remainder of the week.

Mr. Little maintained in the cross-examination that 6½ per cent. upon investment should be allowed for cost of repairing the plant, the danger of new processes accruing from the possibility of the discovery of natural gas making the artificial plant valueless and probable electrolysis to pipes which would incur much expense. He furthermore maintained that 10 per cent. should be allowed for the profits of the corporation and the defraying of expenses in the effort to secure favorable legislation. "What do you mean by an effort to secure favorable legislation?" asked Attorney Mansfield. "I do not mean bribe money," replied Mr. Little with a smile. "The gas companies must spend money to secure legislation that they are entitled to in all justice. Even though they are entitled to it there is no certainty of receiving it and in the event of failure there is a dead loss."

288½ Chicago American, November 19, 1901.

Peoria gas trust dividend is 53 per cent.

Cost of manufacture shown in court to be 18 cents and it is sold to consumers for $1 a thousand cubic feet.

Figures for last August show that $495.19 was paid for making illuminant, which brought company $2,950.

The Peoria 75 cent gas fight, which was on hearing for several weeks in Chicago, has been adjourned to Peoria, where it will be resumed Thursday. The reason for taking the case to Peoria was to give the officers of the Peoria gas trust an opportunity to produce their book before Master in Chancery Pinckney, who is taking the testimony.

City Attorney Mansfield of Peoria, who is conducting the people's side of the case, has fortified himself with a knowledge of the Peoria gas plants, which is as comprehensive and detailed as that of the gas officials.

Costs 18 cents a thousand.

The cost of making gas in Peoria is about 18 cents a thousand. In the month of September 1901, the net cost of making gas in Peoria was 18.6 cents in the month previous, August, 1901 the net cost of making gas by the Peoria Gas and Electric Company was less than 17 cents, or, to be exact 16.78 cents.

Thus far the only official of the Peoria Company who has been on the witness stand is Francis E. Little vice president and manager of *of* the trust. Mr. Little was not asked by his own lawyer what it cost *it cost* his company to make gas. It is promised, however, that he will be asked that question, and when he is Mr. Mansfield will be in possession of the reports of the gas company and prepared to ask some annoying questions.

According to the confidential reports of the Peoria Gas and Electric Company every item in the cost of making gas in the company's plant is known.

289 Chicago-American, November 19, 1901.

Specified figures given.

For the month of August last the Peoria Gas Company paid for material $1,420.63, and for labor $752.84 making a total outlay for the month of $2,173.47. The residaals or by-products, were sold for $1,678.28. This leaves a net cost of the gas for the month of August at $495.19.

In that month the net sale of gas was 2,950,000 cubic feet. At $1 a thousand this would be $2,950. After deducting the cost of making

the gas, this leaves a net profit for the month, of $2,454.81. That means $30,455.32 net profit for a year.

The output of gas for that month was small, however, compared with the present consumption in Peoria. The reports of the company for November 1, 1901, shows that the consumption of gas in Peoria that day was 549,300 cubic feet. That would be $17,028,301 cubic feet a month. Deducting 2 per cent. for leakage, the net consumption of gas for the month would be 16,660,000 cubic feet. At $1 a thousand this would be $16,660.

Profits estimated.

At the rate of 17 cents a thousand cubic feet, that amount of gas would cost the gas company $2,832.20. The net profit for the month to the gas trust would be $13,827.80. Using these figures as a basis the gas trust's profits for the ensuing year at $1 a thousand cubic feet would be $165,933.60. Taking the value of the plant at $300,000, which is an excessive valuation on the actual value of the working plant, the dividend would be for the year 53 per cent.

If the city of Peoria were to win its suit for 75 cent gas the net increase of the gas trust would be reduced to $12,450 a month, or $140,400 for the year. This would give the gas trust owners a dividend of 39.75 per cent.

290 15. I will ask you if you are not here at the present time for the purpose of participating in the further examination of witnesses in this case?

A. That remains to be seen, so far as my connection with the case is concerned; I think Mr. Mansfield is the gentleman who is conducting the city's case.

16. So far as you know, what are you here for?

A. I am here to represent the Chicago-American in the fight.

17. In what fight?

A. In this gas case.

18. In this particular case?

A. No, not in this particular case but to represent the American so far as evidence is concerned for facts and news.

19. And also to assist in furnishing facts in the proceedings of the trial?

A. I am here as the representative of the Chicago-American newspaper.

Re-cross examination by Mr. MANSFIELD:

1. Does any one else furnish articles on the gas question to the Chicago-American except yourself?

A. Yes, sir, there are two other gentlemen that I know of.

2. Who are those gentlemen?

A. A man named Webster and a man named O'Shaunessy: They have been connected with the American in this fight.

291 JOHN H. EUSTIS, called on behalf of complainant, being first duly sworn, testified as follows:

Direct interrogatories by Mr. IRWIN:

1. State your name, age and residence.

A. John H. Eustis; 45; Chicago, Ill.

2. In what business are you engaged?

A. In the manufacture and distribution of gas.

3. What position do you hold with reference to the business named?

Ans. I am engineer of the People's Gas Light & Coke Co. of Chicago, and have held similar positions in the business for the last 30 years.

4. Are you familiar with the business of manufacturing and the distribution of gas?

Ans. Yes sir.

5. How long have you made that a specialty?

A. About 30 years.

6. Are you familiar with the different processes entering into the manufacture of gas?

Ans. Yes sir, most of them.

7. From the time you commenced the study of the manufacture and delivery of gas for consumption, what different positions have you held during that period in that line or profession?

A. I commenced business in the gas industry about 30 years ago and during the past 20 years I have filled positions for different companies as follows:—I was superintendent of the Consumers' Gas Light & Fuel Co. of Chicago; engineer of the Chicago Gas Light & Coke Co.; I was also employed in the gas works at Rutland, Vermont.

8. And how long have you held your present position?

A. About 4 years.

9. Will you give us a brief history of the art of manufacturing gas for illuminating or fuel purposes?

292 A. Coal gas was first successfully introduced for illuminating purposes about 100 years ago in the city of London; it was introduced in this country in Boston about 1822 and in the city of New York about 1827 and in the city of Philadelphia about 1835. The process at that time was known as the coal gas process, and the system of furnaces in use was the old open fire or common furnace and at that time about the benches were arranged with 3 retorts per bench.

10. What advancement or improvement- have been made in the manufacture of coal gas in the last 25 years?

A. This common old style furnace, as I have stated, was in use at that time, but about 20 or 25 years ago regenerative furnaces were introduced and that style of furnace has been very generally used since that time. In this style of furnace the retorts vary from 3 to 9—9 being most generally used at the present time, that is, 9 retorts to the bench.

11. What changes or improvements have been made in the purification of coal gas during that period?

A. In the early history of coal gas making, lime was used almost exclusively for purifying purposes; about 20 years ago, as nearly as I can remember, oxide of iron was substituted for lime and has been used almost exclusively since that time; at a few works throughout the country some lime is still used but not to any great extent.

12. Will you give in detail the present process of manufacturing and purifying gas from the time the coal enters the retort until it is ready for delivery to consumers?

A. In the process of manufacturing coal gas, the system of retorts are heated to the proper temperature by means of regenerative furnaces which are placed underneath the retorts and when the
293 proper temperature has been obtained bituminous coal is placed in the retorts and due to the heat, the gasses are driven off from the retort through into the hydraulic main and from that point to a condensing and washing apparatus consisting in the first instance generally of a primary air condenser; from there up to what is known as a P. & A. tar extractor, or other apparatus of that character, from there to a secondary air condenser and on to the multi-tub-lar or tub-lar condenser, from that point to washers and finally into the scrubbing apparatus; from that point it goes on to the purifying department where it goes through the process of purification and from there to the station meter where it is registered as to volume and finally to the storage holder and from there to the consumer.

13. What are the bi-products now produced in the manufacture of coal gas?

A. The bi-products produced in the manufacture of coal gas is carbon, or what is known as coke, tar and ammonia.

14. Give a brief history of the bi-products produced in the manufacture of coal gas and their development?

A. Do you wish to know the quantity of each that is produced per ton of coal?

15. Just a brief history of their development—when they began to produce those bi-products and as to the market for them.

A. So far as my knowledge of the business goes, ammonia, coal tar and coke have been produced during all of the time that I have had any experience in the business—that has been one of the parts of the business.

16. Has there been any development, during your experience in that line of business, in the manner, quality or amount of the bi-products produced from the manufacture of gas?

294 A. Yes, the amount of tar produced per ton of coal averages about 12 to 14 gallons per ton of coal; concentrator ammonia about 4 pounds to the ton of coal; and the amount of coke produced is about 65% of the amount of coal put in the retort.

17. Under the plan of modern benches used in the manufacture

of coal gas, has there been any improvement as to the amount of fuel required in driving off the gasses from the coal?

A. Yes sir, since the adoption of the regenerative furnace, the quantity of fuel required to produce the necessary heat for distilling the coal has been greatly reduced, that is to say, the amount of coke necessary to produce the heat has been reduced from what it was in the old style benches.

18. With what different coal gas plants are you familiar and what different coal gas plants have you examined during the past 25 years?

A. As stated before, I was first connected with the People's Gas Light & Coke Co. at Rutland, Vt.; they manufactured coal gas with the old common furnace benches, 3 retorts to the bench; I have visited and examined coal gas plants at Milwaukee, Wis., Louisville, Ky.; there they have what is known as the incline retort system; Evanston, Ill.—they have the regenerative furnaces, I think, with 9 retorts to the bench. I have also visited the works at Waukegan, Ill.—they have regenerative furnaces there; I have also visited the works at Worcester, Mass.—they have the coal gas process and water gas also. I have also visited a number of others which I do not recall just now

19. What development has been made in the last 25 years in the use of coal gas?

A. It has been used for fuel purposes as well as illuminating purposes.

295 20. About how long since has it become in general use for fuel purposes?

A. Well, I have known coal gas to be used for fuel purposes for something over 10 or 15 years at least.

21. How long since in your judgment has it come into general use for fuel purposes?

A. Well, it has been used for fuel purposes and for general use to my knowledge for 30 years.

22. Do you mean for fuel purposes?

A. For fuel purposes and illuminating purposes.

23. Is it not a fact that the use of coal gas for general fuel purposes in cities is of very recent date—I don't mean for exclusive purposes but for general use for fuel purposes in cities?

A. As a matter of fact, both coal gas and water gas have been used extensively for fuel purposes for only a short time—I think most generally within the past 5 years, but I have known it to be used as I say earlier than that.

24. Have you examined the plant of The Peoria Gas & Electric Co., the complainant in this case in the city of Peoria?

A. Yes, sir.

25. You have visited complainant's plant on several occasions, have you not?

Ans. Yes, sir.

26. About what time did you first see the plant of the Peoria Gas & Electric Co. in its completed condition?

A. As nearly as I can remember about one year ago.

27. I will now call your attention to Exhibit "1" in this case and ask you if it is a fair representation of the plant of the Peoria Gas & Electric Co. in the city of Peoria in its condition at the time you saw it about a year ago?

Defendant objects to the witness testifying from the plat Exhibit "1" unless he describes in the first place what the plant of
296 the Peoria Gas & Electric Co. contains in a general way.

A. From the examinations I have made of the plant of the Peoria Gas & Electric Co. I should say that this plat Exhibit "1" represents the plant as I saw it at that time.

28. Will you please describe the plant of the Peoria Gas & Electric Co. with reference to its general equipment and capacity?

A. In the examination of the plant of the Peoria Gas & Electric Co., I was impressed with the way the plant was laid out and, in my opinion, it is a well designed plant and capable of doing the work for which it was designed in every way in a first class manner.

Defendant objects to the foregoing answer as not responsive and moves the court to exclude it.

29. Will you describe the parts in detail including the machinery, buildings and apparatus that is contained in the plant of complainant company?

A. The plant of the Peoria Gas & Electric Co. consists of a retort house in which are located 7 benches of retorts, 9 retorts in each bench, with the necessary hydraulic mains and connections for the same; a primary air condenser, two exhausters of the Root pattern, a secondary air condenser; a tubular water condenser; then there are two other washers and I believe a washer known as the Choller washer; two water scrubbers; two purifying boxes, with the necessary connections and supports; station meter; gas holder; one oil tank; tar tanks and ammonia tanks; coal storage sheds and coke sheds.

30. Did you find engines, boilers and their connections?

A. Ammonia concentrator; I found two boilers, pumps and water tanks, elevators, conveyors and the necessary fittings and machinery for operating meter and street department. That is about all I think
of just now.

297 31. Are you acquainted with the general location, size, improvements and topography of the city of Peoria?

A. Yes, sir, I have a fair knowledge of the city, as I have visited Peoria a number of times.

32. Assuming the population of the city of Peoria, and territory tributary to said plant of complainant, is about 63,000 inhabitants, what in your opinion should be the size, nature and character of a

gas plant to be constructed for the manufacture and sale of coal gas in the city of Peoria?

A. In my judgment the plant as erected by the Peoria Gas & Electric Co. is of ample capacity to take care of the business of the city and I think, if I were designing a plant, I would design one of about the same capacity. My judgment of this matter would be influenced, of course, to a certain extent, because of the fact there was already a gas plant existing here and at the most this plant could expect to get but a part of the business.

33. As an expert what is your opinion of the plant of the Peoria Gas & Electric Co. with respect to its fitness as to size, character and equipment for the manufacture and sale of coal gas in the city of Peoria, taking into consideration the element of future growth?

A. In my judgment the plant is of sufficient capacity, and I think it is designed on lines which make it as economical as most plants for the manufacture of coal gas throughout the country.

34. What in your judgment is the nature and character of the plant of the Peoria Gas & Electric Co. with reference to the manufacture and delivery of gas economically considering the location and local conditions?

A. I think the location of the plant is very good indeed, about as good a location as could be had; it has good railroad facili-
298 ties, good water facilities and I think its arrangement is all right in every respect for the economical manufacture and delivery of gas.

(The MASTER:)

35. Are you speaking now with reference to its location for that purpose or as to the construction and location combined for that purpose?

A. As to the construction and location combined.

(Mr. IRWIN:)

36. Are you familiar with the cost in the city of Peoria, during the years 1899 and 1900, of the various items of labor, machinery and material entering into the construction of a gas plant of the capacity and character of the plant of the Peoria Gas & Electric Co.?

Objected to because no proper foundation has been laid showing the familiarity of the witness with the cost of labor, machinery or material in the construction of a gas plant.

A. Yes sir.

37. From your examination of the plant of the Peoria Gas & Electric Co., and from your knowledge of the cost of construction of similar plants, are you able to state what would be the reasonable cost price of the plant and mains of the Peoria Gas & Electric Co.?

A. Yes sir.

38. From your examination of the plant of the Peoria Gas &

Electric Co. and from your knowledge of the cost and price of labor, machinery and materials in the city of Peoria, please state what in your opinion would be the reasonable cost of the construction of said plant, fully equipped tested and ready for the delivery of gas to consumers, assuming that the said plant was contracted for and erected during the year preceding September 1, 1900, excluding from your estimate the cost of real estate and also excluding the cost of mains, and services, and other expenses outside of the construction and equipment of the manufacturing property—give items
299 in detail if you can?

A. I estimate the cost as follows:—Retort house $12,000.; purifying house and boiler house $18,000.; office and meter shop $4,000.;—the meter shop refers to the shop where meters are stored and repaired—meter house $2,000.; oil house $500.; coal & coke sheds $12,000.; stack of benches, connections, hydraulic mains complete $23,000.; two purifyers and connections complete $7,000.; condensing apparatus $12,000.; 2 boilers $3,000.; ammonia concentrator $2,500.; holder and foundation $28,000.; meter and connections $3,000.; fixing bench $2,500; pumps, water tanks, elevators, and conveying apparatus $3,500.; tar and ammonia wells $3,000.; photometric and chemical apparatus $1,000.; Connelly governor and connections $1,500.; gas mains and valves $4,500.; gas, steam and water pipes, sewers and tools $5,000.; I have added 10 % for sundries and superintendence in the erection of plant, etc., $14,700.; making a total of $162,700. for the manufacturing plant exclusive of real estate.

39. Were those valuations taken by an examination of the plant on the ground in the city of Peoria where located?

A. Yes sir, I have visited the plant on two or three occasions and have noted the different apparatus and placed the value on that basis.

41. Who was with you, if anyone, at the time you made this investigation at which the prices you have named were fixed?

A. Mr. E. G. Cowdery was with me and the superintendent of the works.

43. Did you make any estimate at that or any other time of the cost of the mains and the laying of the same in and through the several streets and highways of the city of Peoria?

A. Yes, sir, we did.

44. Where did you get the data from which you made
300 such estimate?

A. From the books and records of the Peoria Gas & Electric Company.

45. State what estimates you made as to the cost of the mains and the laying of the same in and through the several streets and highways of the city of Peoria, based upon the data given you?

A. From an examination of the records, books and maps of the company we found that there were 1709 feet of 16 inch main laid in the streets at $2.25 per foot, amounting to $3957.75.

46. Did you get that cost from your examination of the reco
or simply the size and number of feet?

A. We simply got the size and number of feet of mains from
records. 21,229 feet of 12 inch pipe at $1.50 per foot, amounting
$31,843.50; 3483 feet of 10 inch pipe at $1.00 per foot, amount
to $3483.; 19,465 feet of 8 inch pipe at 90 cents a foot, amount
to $17,518.50; 12807 feet of 6 inch pipe at 70 cents a foot, amou
ing to $8,964.90; 79,486 feet of 4 inch pipe at 40 cents a fo
amounting to $31,784.40, making a total of $138,229 feet a
total cost of $97,562.05. We found that about 37,864 feet of th
mains were laid in streets and alleys under pavement and we es
mated the cost of the paving at about $1.00 per foot, amounting
$37,864., making the total cost of mains $135,426.05.

47. Do you mean in your answer that in each instance the s
and length in feet of each pipe was secured from the records of t
company and that the cost of the pipe and the laying of the sa
were your estimates?

A. The number of feet of pipe of each size was taken from t
records of the company and as shown by its map, but the cost
the mains was made up from our own figures and our own exp
rience in the work of laying gas mains.

301. 48. That includes the labor and repaving?

A. Yes, all the work complete.

49. Did you in a similar manner estimate the cost of laying t
service pipes from the main into the premises of the consumers?

A. Yes sir.

50. Please give us that estimate?

A. The number of services, as shown by the records of the com
pany, was 2426, the average length of each service being estimate
at about 85 feet. In fact, we figured them at 85 feet each at 2
cents per foot or $21.75 each, making a total of $52,445.

51. Did you make any estimate of the service tools required i
the laying of the mains and service pipe?

Objected to as leading and suggestive.

A. Yes sir.

52. What if any estimate did you make of the cost of the servic
tools required in the laying of the mains and services mentioned?

A. The estimate for the cost of tools to be used in the street and
meter departments and for the work of laying mains we estimated
at $4,000.

53. Did you receive any data as to the number of meters used
and owned by the complainant company?

Ans. Yes sir.

54. Did you make an estimate as to their cost?

A. Yes sir.

55. What was the number of meters and the estimate you made
as to the cost of such matters?

A. According to the records of the company, it has 2140 meters

and we estimated the value of the meters and connections complete at $8 per meter or a total of $17,120.

56. In your estimate heretofore given as to the cost of the plant of the complainant company in the city of Peoria, did you include in your estimate any amount for the legal organization
302 of the company and the equipment and organization of its business office, cost of advertising, soliciting, etc.

Ans. No sir.

57. What in your judgment would be the cost of equipping and organizing the office of the Peoria Gas & Electric Co. in the city of Peoria, including the expense of testing the plant ready for the delivery of gas to consumers, that is, the office equipment, books and everything?

Objected to because no foundation has been laid showing that the witness is familiar with the cost of furnishing such an office and the cost of office supplies.

A. We estimated the expense of the material and furniture, fixtures, testing apparatus, etc., to be about $13,000.

58. Does that include the legal organization of the company? such as attorney's fees, securing franchise, etc.?

A. No sir, I made no estimate and I don't know that either of us discussed that point, because of the fact it is an expense which is pretty hard to determine under the conditions which existed here at the time.

59. It is a necessary expense, however, in the organization of a company and its equipment for business?

Ans. Yes sir.

60. What in your judgment would be a proper candle power in the manufacture of coal gas for general use?

A. 17 to 18 candle.

61. What elements or forces contribute to the depreciation of a coal gas plant and its mains and how and to what extent do they act in your judgment?

A. In the case of the plant or manufacturing departments there are many causes which tend to rapidly depreciate the value of a plant. First, the retort benches. They are constructed of
303 fire clay material, the flue arrangement is very carefully calculated out and if in starting up the benches they are heated through rapidly—unequally, expansion and contraction takes place, often disturbing the internal construction of the flue work, often in overheating it causes sagging of the retort, oftentimes breaks in different places causing leaking. In the purifying department, since the use of oxide of iron has been adopted, the oxides attack the cast iron work of the boxes and covers and the sulphur and the acid attack the metal and it is rusted out, cut out in a very short time. The drums of meters, which are very expensive, are cut out or rusted out by coming in contact with the vapor of oxides carried over; I have known meter drums to be entirely de-

stroyed in the course of three or four years. The holders are subjected to considerable wear and tear; in the winter season of the year when extremely cold I have known the water in the pits to be frozen and the holders will become locked and in attempting — open them they have been strained and broken. In the matter of buildings, there are constant changes going on and a great deal of expense incurred in keeping them in proper repair. Those are some of the items in the manufacturing plant.

Now, in the case of street mains. The destruction of the mains go- on rapidly, due to several causes; among some of these causes is the fact that the streets and alleys have been filled and graded with cinders, boiler ashes, street sweepings and sometimes garbage, and these various materials create acids which attack street mains and cause them to rust out in a short time. There is another matter which I wish to speak of in particular, that is destroying the mains and services of gas companies and water companies very rapidly at the present time, and I refer to the matter of electrolysis;
304 I think that is one of the greatest dangers or hazards that the gas mains and services of a gas company has to contend with today; in my own experience I have known gas mains so seriously affected from electrolysis that it is possible to take the pipe and whittle or cut it with a knife; I have seen services perforated and I think that is a matter that is bound to cause great loss to gas companies in the near future.

62. In what manner in your opinion does good business policy require this depreciation to be taken into account in conducting the business of a coal gas company?

A. I think the better way to take care of depreciation of that kind would be to charge off yearly about 5% of the total cost of the plant, not including real estate.

63. Does that include mains, services, meters, etc.?

A. That includes the entire manufacturing plant complete, mains, services, and meters—all apparatus used in the manufacture and distribution of gas.

(The MASTER:)

64. Do I understand you so say that that amount charged off annually from the original cost of the plant is adequate in your judgment to replace and repair the depreciation from the sources you have referred to?

A. I should say in my judgment that ought to be sufficient, although, of course, in some localities and under some conditions it might not be sufficient.

(Mr. IRWIN:)

65. It is a conservative estimate?

A. I consider it a conservative estimate, yes sir, and I would add further that I believe a careful examination into this subject will fully substantiate my position.

66. Aside from general depreciation, concerning which you have testified, what are some of the hazards of the gas business as an investment?

A. In the first place, electricity enters into the competition
305 which gas companies have to meet very largely and I sometimes think that electricity may some day supercede gas for illuminating purposes and gas may be used for fuel purposes only.

67. Are any changes taking place in the methods of manufacture?

A. There are other matters that I might add which enter into its hazard and that is the fact that there is constantly going on improvements in the machinery and apparatus for the manufacture of gas.

68. As those new improvements come out, what effect has it upon the old machinery of the company?

A. To be improvements they must necessarily effect the economical production of gas and a gas company equipped with old style apparatus, in order to meet this competition, must necessarily adopt the new machinery which, of course, involves a large expense and a waste of money or money invested in other apparatus.

69. What effect does natural gas in places have upon the hazard to an artificial gas plant?

A. I have in mind several places where natural gas has come into competition with artificial gas and it has, of course, very seriously affected the return on the investment.

70. From your experience and observation in the management and investigation of gas plants, are you able to state what would be a reasonable and fair return to investors taking into consideration the hazards of the investment on account of the new inventions and the competition concerning which you have testified?

A. In my judgment 10 % annually would be a fair return on the investment in such properties.

71. What would be a fair and reasonable return to investors upon the cost of a gas plant taking into consideration the hazards of the business referred to?

306 A. 10 % annually on the total capital invested.

72. Assuming that the Peoria Gas & Electric Co. commenced the manufacture of gas at its plant about May 1, 1900, for delivery to consumers and on September 1, 1900, was manufacturing at the rate of about fifty million cubic feet of gas per year; and assuming that the cost of material and wages of labor and the general expenses of operating were fair and reasonable, considering the location of the plant; and assuming further that the management and superintendence of the plant was sufficient and competent; and assuming that the cost of gas coal delivered on board cars in Peoria at that time was $2.65 per ton, what in your opinion would be the actual cost per thousand cubic feet of gas manufactured and delivered to consumers by said company on or about September 4, 1900,

excluding the value of residuals and excluding also any charge for depreciation or interest on the investment?

Objected to unless it is shown the witness is familiar with the cost of labor in the manufacture of gas in the city of Peoria and is familiar with the reasonable price paid for such labor and materials in the city of Peoria as appertains to the manufacture of gas?

A. In giving you my estimate of what would be a fair cost for the manufacture of gas it would be rather difficult for me to give you a figure which would be very close to the actual cost for that period of time, because of the fact that the plant was a new one and the operations were such that it had not got down to a good working basis; but ordinarily for a plant of this size and capacity I should say that about 80 cents per thousand cubic feet would be a fair cost.

73. Is that assuming that the plant had been running a sufficient time to get into good economical operation?

Ans. Yes sir.

307 74. How long in your judgment does it ordinarily take for a new plant to become in good working order for the economical manufacture of gas?

A. Anywhere from four to six months.

Cross-examination by Mr. MANSFIELD:

1. You are a brother, are you not, of the Mr. Eustis who is superintendent of the Peoria Gas & Electric Company?

Ans. Yes sir.

2. You are the engineer of the People's Gas Light & Coke Co. of Chicago?

Ans. Yes sir.

3. The same men that own the controlling interest in the Peoria Gas & Electric Co. own a controlling interest, do they not, in the People's Gas Light & Coke Co. of Chicago?

Objected to as incompetent, immaterial and not cross examination.

A. I do not know anything about that at all.

4. There is a suit pending now, is there not, against the People's Gas Light & Coke Co. of the City of Chicago which is based practically upon the same cause of action as is this suit brought by the Peoria Gas & Electric Co. against the City of Peoria?

Objected to same grounds as before and also as not the best evidence.

A. I don't know of my own knowledge that that is a fact; I have heard something to that effect but have no positive knowledge it is so.

5. You have not been called upon to give any evidence in any such kind or character of a case in the city of Chicago?

A. No sir.

6. In the early manufacture of gas, or when gas was first discovered, for what purpose was the gas used?

A. For illuminating purposes.

308 7. What do you mean by illuminating purposes?

A. I mean for the lighting of homes, buildings, stores and business places.

8. What was the character of the furnace and the retorts used for the manufacture of gas when gas was first discovered?

A. The style of furnace used when I first became familiar with the business—interrupted.

9. I am not asking you when you first became familiar with it—I am asking when gas was first discovered?

A. The kind first used so far as my information goes was what was known as the open fire or common furnace.

10. That was the furnace used upon the first discovery of gas?

A. Yes, so far as my knowledge of the subject goes in the manufacture of coal gas.

11. Is your knowledge from your own personal experience in the manufacture of gas or is it a theoretical knowledge obtained from the study of the manufacture of gas?

A. My knowledge of the coal gas business is a knowledge one obtains from actually doing the work—working in the retort house, charging and drawing the retorts and doing all or a part of the necessary work to manufacture and distribute gas.

12. Why was the change made in the manufacture of gas from the use of lime in the purification process to the use of oxide of iron?

A. One of the chief reasons for the adoption of oxide of iron as against lime was the fact that very large quantities of lime were necessary to do the amount of work that oxide of iron would do; also the further fact that it was difficult to dispose of the lime after it had been used; lime can only be used once for purification purposes unless it receives a revivifying treatment whereas oxide

309 of iron can be used over and over for a period of years; I might say also economy is one of the reasons for the change.

13. In the use of oxide of iron is there any bi-product obtained from its use that can be sold in the commercial world?

A. Yes sir, in the use of oxide of iron for purification purposes there is a constant increase in the percentage of sulphurous compounds which the oxide holds and I have known of it being treated for the purpose of extracting those sulphurous compounds and other chemicals.

14. Then the sulphur products obtained from the use of the oxide of iron in your opinion is a bi-product in the manufacture of gas?

A. There is, as I say, a substance which is extracted from the oxide of iron, but it is not of sufficient consequence to cause gas companies to take any steps to retain it; they simply sell the spent oxide, as it is called, to chemists who are in the manufacture of chemical

matters and they make some use of it; gas companies to my knowledge have never done so.

15. And they have no apparatus connected with their plant for the purpose of extracting these sulphurous compounds?

A. No sir. We have apparatus in our plants for the purpose of determining the percentage of sulphur which the oxide contains and when they have reached a certain percentage we discard the use of them because of the fact the oxide will not purify the same amount of gas under those conditions as it formerly did.

16. What do you mean when you say "our plants"?

A. I refer to the plants of the People's Gas Light & Coke Co.

16. How many plants has the People's Gas Light & Coke Co.?

Complainant's counsel objects to the question as immaterial and not cross examination and directs the witness to refuse to
310 *refuse to* answer the question.

A. Under the advise of counsel, I refuse to answer the question.

17. In the manufacture of gas, is there any such bi-product known to the commercial world as nap-thaline?

A. In the manufacture of gas naphthaline is produced in small quantities but not to such an extent that it can be made as a bi-product exactly to be disposed of and returned in revenue.

18. Do gas companies when they produce any of that dispose of it?

Ans. Not to my knowledge.

19. Is there a gas plant in the United States, to your knowledge, that does do that?

A. There is not a gas plant that would manufacture or dispose of naphthaline as a bi-product; if it did it would be doing business under a very wasteful process according to my way of thinking because of the fact that naphthaline, which is condensed out of the gas, is one of the properties which acts as an illuminant and adds to the value of the gas for illuminating purposes.

20. In the process of manufacture where is it obtained from the gas?

A. In the manufacture of coal gas, naphthaline is one of the enrichers which go to enrich the gas and in the washing and condensing process by two suddenly lowering the temperature, or other local conditions, naphthaline may be precipitated and thus lost.

21. You say by proper treatment naphthaline is considered as an enricher of gas. Do you know whether they have the means of treatment, as indicated by you, in the Peoria Gas & Electric Co., to convert naphthaline into an enricher of gas?

A. I am not prepared to say whether the plant of the Peoria Gas & Electric Co. manufacture or generate naphthaline. In fact,
311 I am sure they would take all possible steps in their power to prevent it.

22. In your opinion, as an expert, is the gas plant, as constructed and installe- by the Peoria Gas & Electric Co., a modern

plant and one of the best equipped plants that could be installed at the time of its installation in the city of Peoria for the manufacture of gas?

A. Yes sir, in my judgment and opinion, the plant of the Peoria Gas & Electric Co. has all of the modern apparatus and is well equipped in every respect to manufacture coal gas as economically as any other plant of its size in the country.

23. In your opinion, is the plant of the Peoria Gas & Electric Co. a modern and well equipped plant taking into consideration that said plant makes or is furnishing all the gas that is used in the city of Peoria?

Objected to as incompetent, immaterial, not cross examination and not supported by any evidence in this case and not pertaining to the issues.

A. In my opinion, as before stated, the plant of the Peoria Gas & Electric Co. is well equipped to take care of the business for which it was designed. I am not prepared to say it is capable of supplying all of the gas that might be needed in the city of Peoria;

24. What is the bench capacity of the Peoria Gas & Electric Co. per day?

A. The bench capacity of the Peoria Gas & Electric Co. under ordinary working conditions ought to be between 550,000 and 600,000 cubic feet—possibly 550,000.

25. What is the working capacity of the condensing plant of the Peoria Gas & Electric Co.?

A. The condensing, scrubbing, washing and purifying capacity of the Peoria Gas & Electric Co. was designed to take care of
312 about 500,000 or say 550,000 per day and I think it is fully capable of doing its work.

26. What is the capacity of the purifying boxes?

A. I should judge it would be from possibly say 600,000 to 800,000 per day; the plant, of course, is so arranged that at times one of these boxes may be empty, as the material therein becomes foul; at such times it is necessary that all the gas pass through one of these boxes, therefore one of them should be equal to the capacity of the plant in case of necessity.

27. What is the capacity of the storage holder of the Peoria Gas & Electric Co.?

A. 300,000 cubic feet.

28. What is the capacity of the ammonia condenser of the Peoria Gas & Electric Co.?

A. The capacity of the ammonia concentrating plant was also designed to take care of the maximum make of the plant and I think is capable of doing its work thoroughly.

29. What is the size and make of this ammonia concentrator?

A. I could not give you the actual dimensions because I have never taken a measurement of them.

30. What would be the size necessary to take care of the manufacture of 600,000 cubic feet of gas per day of 24 hours?

A. The size of the plant necessary to take care of that amount of gas should be about the size of the one they have there. As I say, I have not gone into a measurement of it but it is capable of taking care of about 50 or 60 tons of coal per day.

31. You state you have been down to complainants' plant at various times when the plant was working. State whether or not from your examination of that plant the ammonia concentrator would take care of 50 tons of coal per day?

Objected to as assuming the witness had said certain things
313 he did not testify to.

32. Well, from your inspection of the plant, state whether or not the ammonia concentrator of the Peoria Gas & Electric Co. will take care of 50 tons of coal per day?

A. As I said, in investigating the plant, I looked over the apparatus but did not take the exact measurement of it in every detail, but from the size and general appearance of it, as compared with other apparatus in use for that purpose, I should say it would do its work.

33. In estimating the cost of the ammonia concentrator, did you estimate that cost upon the size of the ammonia concentrator as found there or did you estimate it upon the ammonia concentrated which should take care of the product of that gas plant?

A. In estimating the cost of the ammonia concentrator from the view I had of it, I estimated on the plant as I saw it there.

34. That is, in relation to the other parts of the plant and not as to its size?

A. In relation to the plant generally what would be required to do the work.

35. Then if this ammonia concentrator is not sufficiently large to take care of 50 tons of coal a day, you have made a mistake in your estimate of the cost of that plant?

A. If the plant is not up to what I believe it to be.

36. You are talking with reference to the ammonia concentrator?

A. Yes sir. In my judgment the plant has sufficient capacity to take charge of the requirements of the plant and I base——

37. (Interrupting.) And as an expert witness, you don't know what size amoonia concentrator would be necessary to take care of 50 tons of coal per day?

A. I know about what would be necessary from my expe-
314 rience with apparatus of the kind in the past.

38. What would be necessary?

A. Well, a plant for the size of the works at Peoria it would be necessary for it to be sufficient to take care of the amount of ammonia which would be produced from about 50 to 60 tons of coal per day.

39. What would be the size of such an ammonia concentrator?

The MASTER: What Mr. Mansfield means is, what sized ammonia concentrator would be required to take care of the ammonia produced from 50 or 60 tons of coal a day?

A. Well, they are generally rated in their capacity, with the number of tons of coal they are able to take care of; that is the way they are bought; when we buy a set of apparatus for use in works of that capacity we specify that the apparatus must have a capacity of taking care of a certain number of tons of coal per day and, as a rule, we do not go into the height *h*, depth or diameter or things of that kind, but that it shall have the capacity of taking care of a certain amount of coal per day.

40. Will the size of that ammonia concentrator take care of 50 tons of coal per day?

Ans. In my judgment it will.

41. Where was that ammonia con-trator manufactured, if you know?

Ans. I think it was manufactured in Michigan by the Michigan ammonia works.

42. In the manufacture of gas, is it customary to use air in the purification process?

A. Yes sir, in most of the works throughout the country today air is introduced to assist in the work of the purification of gas.

43. How much air do they generally use in that purification process?

315 A. Anywhere from one half of one per cent. to one per cent. of air.

44. From an examination of the plant of the Peoria Gas & Electric Co., what percentage of air would you recommend as an expert in the purification of gas?

A. I should be governed largely in my work by the candle power and other matters, but I should say one per cent.

45. What per cent. of air is used in the manufacture of gas for purification purposes by the Peoria Gas & Electric Co., if you know?

A. I don't know that they use any air at all.

46. Did you see any connections around that plant for the use of air?

Ans. No sir, I did not.

47. State whether or not in your opinion, as an expert, it is customary in the construction of a modern plant to have a tar still for the purpose of reducing the tar to pitch?

A. It is not customary as a rule for gas companies to distill their own tar products; they usually dispose of the tar products to parties or companies which make a specialty of that class of work.

48. Has the People's Gas Light & Coke Co. of the city of Chicago a plant for the distillation of the tar obtained from the manufacture of gas by them?

Mr. IRWIN: Complainant objects to the question as incompetent,

immaterial, and not cross examination, and I direct the witnes- not to answer. We are investigating no plant but the Peoria plant.

A. Under the advice of counsel I refuse to answer.

49. Have you knowledge of the fact as to whether they have or not?

Complainant's counsel objects to the question on the same grounds as before and instructs the witness to refuse to answer.

316 A. Under the advice of counsel I refuse to answer the question.

50. You have testified that you have been connected with various gas plants in the United States for the last 30 years—have you been connected with any gas plant during the last 30 years that owned a plant for the distillation of the tar obtained from the manufacture of gas?

Ans. No sir.

51. Does the cost price of gas decrease or increase in proportion to the volume of the gas manufactured?

A. The cost of gas in some of its accounts decreases as the volume of gas increases.

52. What do you mean by accounts?

A. I mean to say that some of the items of expense—what I meant to say was that the cost of gas decreases as the volume increases; some of the items which go into the cost of gas decreases as the volume is increased.

53. The Peoria Gas & Electric Co.'s plant in the city of Peoria consists of a stack of 7 benches which contain 9 retorts and each bench contains also a regenerative furnace of the full depth type for heating retorts; the gas after being driven off of the coal passes over into a preliminary air condenser and from this condenser it passes through a tar extractor, of the type known as P. & A., it then passes through two air coolers, then through 2 water coolers, then through a washer, then through 2 scribbers, after leaving the scrubbers the gas passes through purifyers containing oxide of iron for the purpose of removing the impurities and for the purpose of removing the impurities known as sulphuretic hydrogen and carbolic acid, after leaving the purifyers the manufacture of gas is complete and it then passes through a station meter where it is reg-

317 istered as to volume and forced into the storage holder from which it is distributed to the proper mains in the streets. From this description of the plant of the Peoria Gas & Electric Co. in the city of Peoria, would you consider it a modern and one of the best equipped plants that could be constructed at the present time for the manufacture of coal gas?

A. Yes sir, I would.

54. Supposing the plant was as described in the former question and to that plant so described there was added an ammonia condenser of a capacity to take care of the ammonia obtained from the

manufacture of 165,000 cubic feet of gas per day, would you then consider this gas plant to be a modern gas plant and so constructed as to reduce the cost of the manufacture of gas to the minimum, assuming that the gas plant as described does manufacture 500,000 cubic feet of gas per day?

Ans. No sir, I would not.

55. Supposing you had a plant consisting of a stack of 7 benches which contained 9 retorts each and each bench contained also a regenerative furnace of the full type for heating retorts; also a preliminary air condenser and tar extractor of the type known as P. & A.; 2 air coolers; 2 water coolers; washers and 2 scrubbers; 2 purifiers containing oxide of iron; a station meter and a storage holder; the bench capacity being from 500,000 to 600,000 cubic feet of gas per day of 24 hours, the condensing plant of a working capacity of slightly over 500,000 cubic feet per day; purifying boxes of a capacity of from 800,000 to one million cubic feet per day; a storage holder of the capacity of 300,000 cubic feet per day, and an ammonia condensing apparatus added of a capacity sufficiently large to extract all the ammonia from the gas made; also a tar still attached for the purpose of reducing the tar to pitch and extracting the several grades of oil from all the tar produced from the manufacture of the gas; also an apparatus for
318 purifying of the naphthaline produced from the manufacture of the gas; also an apparatus for extracting the sulphur and preparing it for commercial use; also a thoroughly equipped chemical laboratory attached through which a chemical analysis of the gas was made daily. Would not the plant above described be in your opinion a more modern and better equipped plant for the purpose of reducing the cost of the manufacture of coal gas to a minimum than the plant as described in my last interrogatory propounded to you on cross examination?

Objected to as incompetent, immaterial, not cross examination.

A. In answer to that question, I would say, that the works of the Peoria Gas & Electric Co. contain all of the apparatus enumerated in the question with the exception of a still for reducing the tar product for obtaining the sulphurous compounds, as I think you have stated, and the chemical laboratory. In fact, I believe the Peoria Gas & Electric Co. have at their works an amount of chemical apparatus sufficient for the proper guidance of its superintendent. As to the matter of apparatus for distilling tar, I am not prepared to say from any personal experience as to whether it would be an economical feature of that plant or not, that is, as to the tar distilling apparatus. All companies with which I have been connected have usually disposed of that at a figure satisfactory to themselves and have not gone into that matter.

56. From your expert knowledge of the manufacture of gas, would a plant as described above be a better equipped plant for the manufacture of gas and the reduction of the cost of the gas manufactured

to a minimum than the plant of the Peoria Gas & Electric Co. if such plant were located in the city of Peoria?

A. As I have before stated, I have had no experience with
319 any company having apparatus for the purpose of distilling tar or extracting sulphurous compounds, and I do not feel competent to answer that question exactly.

57. You don't know then?

A. I could not state of my own knowledge whether that is a fact or not.

58. What effect, if any, does the use of the Wellsbach burner by consumers of gas manufactured by gas companies have in reducing the commercial use of the electric light by merchants and residents of a city generally?

Objected to as incompetent, immaterial, not cross examination and not pertinent to the issues.

A. I have never made any investigation of the subject to ascertain just what effect the use of the Wellsbach burner or lamp has in reducing competition as against electricity; therefore I do not feel competent to answer.

59. Then you do not take into consideration the use of the Wellsbach burner by consumers of gas when you testify as to the risks of competition by electric light companies with reference to the sale of gas by gas companies for commercial lighting?

A. No sir, I did not take into consideration the matter of Wellsbach lights; it is quite apparent to the ordinary observer, however, that gas companies have and are losing constantly consumption of business on account of electrity.

60. The Peoria Gas & Electric Co. being engaged in the electric light business at the same time as the gas business would not be subject to any loss on that account would it?

Objected to as incompetent, immaterial, not cross examination.

A. I don't know that the Peoria Gas & Electric Co. is engaged in the business of electric lighting.

320 61. In the manufacture of gas, is there any carbon obtained which is of value in the commercial world?

A. Yes sir, there is a carbon which adheres to the retort in the process of the manufacture of gas.

62. How much is that a pound—what is the selling price of it per pound?

A. I could not state what the market price of that is at the present time, for I have not gone into that matter; it is but very small however.

63. From your knowledge as a gas expert what in your opinion would be the cost of coal gas in the holder of a company per thousand cubic feet to a gas company whose gas factory or works consisted of the following apparatus:—A stack of 7 benches which contained 9 retorts each and each bench contains also a regulatio

furnace of the full depth type for heating retorts; the gas then passing through to a preliminary condenser; from this condenser it passes through a tar extractor of the type generally known as P. & A.; the gas then passes through 2 air coolers; then through 2 water coolers; then through a washer and then through 2 scrubbers, from whence it passes through purifyers containing oxide of iron and afterwards passes into the holder. In answering this question, take into consideration also the fact that the bi-products, tar, ammonia and coke are extracted and sold, the tar for 5 cents a gallon, the ammonia for 8 cents a pound, and the coke at the average price of $3.25 per ton; also, take into consideration that 22% of the coke made is used in heating the furnaces and that gas coal costs $2.65 per ton f. o. b. Peoria; also, take into consideration all expenses of the company in the manufacture of gas up to the holder and all the revenues of such company obtained from the sale of residuals, coke, tar and ammonia, basing your estimate on a daily
321 make of 115,00– cubic feet of gas, and the boiler fuel, otherwise than the coke, worth $1.10 per ton?

A. In answering that question, I would say that the cost for coal and retort house labor, steam, fuel, labor for boiler firemen and engineers, cost of purification supplies, superintendency and repairs would be about 53 cents per thousand cubic feet in the holder.

64. Do you mean that including the selling price of the residuals?

A. That is the cost price including the value of the residuals. Deducting the residuals from that price, which I would estimate to be somewhere around 22 cents, it would bring the net cost of the gas in the holder at about 30 cents.

65. Knowing the cost of labor in the city of Peoria and taking the cost of gas coal to be $2.65 per ton, bench fuel $1.10 per ton, other than the coke used, what in your estimation would be the cost of the gas in the holder of the Peoria Gas & Electric Co. per thousand cubic feet of gas manufactured, based upon a manufacture of 500,000 cubic feet of gas per day?

A. On the increased amount of gas made as stated in the question, I should say that the cost of gas per thousand cubic feet in the holder ought to be something less than before stated and the net cost might be in the neighborhood of say 28 cents per thousand.

66. What would be the percentage of tar obtained from the manufacture of fifty million cubic feet of gas—the average percentage?

A. We figure, at least I estimate on the basis of this make we ought to get about 12 gallons of tar per ton of coal distilled.

67. What would be the percentage of the amount of coke
322 per ton of coal burned in the manufacture of fifty million feet of gas?

A. About 65 % of the tonnage of gas coal.

68. What amount of ammonia would be received from the distillation of one ton of coal in the manufacture of gas?

A. About 4 pounds.

69. From your experience as a gas expert and your connection with the business of gas companies, is it customary in the construction of a plant to provide the service pipes to consumers from the curb line into the residence or store room of the various customers who take gas?

Objected to as incompetent, immaterial, not cross examination.

A. I should say it is customary for gas companies to do that in all cases; companies I have been associated with for the past few years have furnished the necessary connections from the main in the street to a point inside the premises of the consumers free of charge.

(The MASTER:)

70. Do you mean by that to a point inside the house or lot?

Ans. Inside the house.

(Mr. MANSFIELD:)

71. What companies that you are connected with do that?

Complainant's counsel objects to the question as incompetent, immaterial, not cross examination and not pertaining to the issues in the case, and instructs the witness to refuse to answer.

A. Under the advice of counsel, I refuse to answer.

72. You testified on direct examination that 22 % of the coke manufactured in the production of gas is used for fuel purposes. State whether or not in your opinion with slack coal selling at $1.10 it would be cheaper to use slack coal or coke for the purpose of heating retorts as affecting the cost of manufacturing gas?

Objected to as immaterial.

323 A. In answer to that question, I would say that in my judgment the use of soft coal at the price named would not tend to cheapen the production of gas.

73. What in your opinion would be the approximate cost for purification supplies used by the Peoria Gas & Electric Co. in the making of 2,437,400 cubic feet of gas?

A. I should say that material would cost about one cent per thousand cubic feet.

74. What would be the cost of the enrichers used in a plant like the Peoria Gas & Electric Co.'s plant for the manufacture of 2,437,400 cubic feet of gas to enrich gas to 18 candle power?

A. I suppose the cost, if enrichers were used, might approximate to about a cent per thousand cubic feet.

75. You have testified that there were two modern processes for the manufacture of gas. Are those the only modern processes you know of—I ask you as a gas expert?

Objected to as not cross examination, and assuming that the witness did testify to that.

A. In stating that there were two modern processes for the manufacture of illuminating gas, I had in mind, of course, the two processes most generally used for the manufacture of illuminating gas which is the coal gas process and the water gas process.

76. In estimating the office fixtures of the Peori- Gas & Electric Co., did you take into consideration the fact that the Peoria Gas & Electric Co. had a gas as well as an electric plant to its business?

Objected to as immaterial.

A. In making these estimates, we did not take into consideration whether there were any other offices associated with it or not; we simply assumed or understood, that the furniture there be-
324 longed to the Peoria Gas & Electric Co.

77. You testified from a memorandum this morning—did you prepare it yourself?

Ans. Yes sir.

78. To whom did you dictate that memorandum?

A. This memorandum was made up in my office by me in company with Mr. Cowdery who was then associated with me in the work.

79. Who dictated that memorandum?

Ans. I did.

80. To whom did you dictate it?

A. To a stenographer named Mr. Gocke in our office.

81. What do you mean by your office?

Objected to as immaterial.

A. The office of the company where I am employed.

82. Was Mr. Cowdery present when that was done?

Ans. No sir.

83. What do you mean then when you say that we arrived at these estimates?

A. I mean that the figures were made up and the estimates made while we were making the investigation and examination of the plant, mains and services of the company here.

84. When was that?

A. I do not remember the exact date; it might have been about two weeks or more ago.

85. Do you know whether any changes have been made in that plant since September 1, 1901?

Objected to as incompetent, not cross examination, and immaterial to the issues.

A. I do not think of any changes.

86. Do you know of your own knowledge whether or not any changes have been made?

Ans. No sir, I do not—any material changes; if there were any changes made, they must have been very slight.

325 87. From your knowledge as a gas expert, don't all coal gas companies in operating their plant arrange their schedule of men employed and number of benches necessary for making all gas required daily on the plan that the coal gas business is a continuous process. In other words, would not a coal gas company if its daily consumption of gas was 165,000 cubic feet operate only enough benches to make that amount of gas required in 24 hours and employ only such men as would be necessary to operate the required number of benches?

A. So far as my knowledge goes, with reference to the number of men employed about the work, they would only keep in operation such number of benches as were necessary to take care of their daily output; it is customary in certain seasons of the year when a very decided increase in consumption is liable to take place for them to have one bench with fire started in order to bring it into service quickly if necessary; this necessarily comes of the fact that in heating up a bench of retorts they have to be heated gradually, heated slowly, otherwise, as I have stated in my previous testimony, the expansion and contraction would seriously damage the settings.

88. State as a gas expert whether the depreciation is less or greater in a bench containing 9 retorts than in a bench containing 6 retorts—the possibility of depreciation?

A. In my judgment, the depreciation in the settings of retorts would be about the same, taking of course into consideration the fact that there are three more retorts in a bench of 9 and if they were destroyed you would get a corresponding increase in the depreciation.

89. Is not there more chance, more possibility, of the benches settling or warping in the case of 9 retorts than in the case of 6 owing to the heat?

326 A. In a properly managed coal gas works and properly handled benches, or economical handling of benches, a certain amount of heat is required to properly distill the coal and in my judgment the chances for injury to benches of 6 retorts are fully as great as they are in benches of 9, taking into consideration the heat.

90. The depreciations you have spoken of to the plant of the Peoria Gas & Electric Co. are depreciations which occur and are liable to happen in any gas plant in the country, are they not?

A. I should say so, yes sir.

91. They are simply a normal risk in contra-distinction to an abnormal one?

A. They are risks which every gas company has to bear in mind in their work of providing for the reconstruction of a plant.

92. In the construction of a gas plant in the first instance, don't the gas companies put in the best material to meet those conditions?

A. Yes sir, that is what they generally try to do.

93. Where did you get your figures to estimate the number of gas pipes that were laid under paved streets in the city of Peoria?

A. I got them from the records of the company and from the superintendent of distribution.

94. From your knowledge of the city of Peoria, would you say that the pipes as laid in the streets and alleys of the city were laid with the view of obtaining the greatest amount of business that it was possible for the complainant company to obtain?

A. Yes sir.

95. Are you acquainted with the distance where these pipes are laid?

A. In making up our estimate of the mains and services and as to the conditions which exist as to paving, etc., we drove
327 about the city and ascertained as closely as possible from personal observation just what the conditions were.

96. In your examination of the streets of the city of Peoria, made two weeks ago, I will ask you to state whether you found the gas pipes of the Peoria Gas & Electric Co. in all the residence portions of the town?

A. We did not go on to every street in the residence portion of the town, we merely went on streets on which the records of the company showed there were mains laid and as directed by the superintendent of distribution who had charge of the work.

97. Have you got the records of the company from which you obtained the information as to where these pipes were laid?

A. No sir, I have not.

98. Can you obtain those records?

A. I think I can.

99. Will you do so?

A. Why, I would have to ask the officers of the company for them but I can give you a number of the streets from memory.

100. Will you obtain those records from the officers of the company?

Ans. I will if I can.

101. In estimating the cost of gas to consumers in the city of Peoria at 80 cents, did you estimate that cost upon the manufacture of 160,000 cubic feet of gas per day or upon the manufacture of 500,000 cubic feet of gas per day?

A. That was estimated on the manufacture of about fifty millions a year.

102. What in your judgment would be the cost of the manufacture of gas delivered per thousand cubic feet where the company manufactures 500,000 cubic feet of gas per day?

A. On a make of fifty million a year I place the cost at
328 about 80 cents per thousand; I think the cost might be reduced a matter of 2 or 3 cents per thousand possibly with the greater make mentioned.

103. You testified that on the manufacture of 500,000 cubic feet of gas per day the cost to the company in the holder would be about

28 cents, deducting residuals, and that the cost of that gas at the point of consumption to the company would be 77 cents. What does the 49 cents per thousand cubic feet represent?

A. It represents the cost of distribution and taxation.

104. What are you basing the cost of taxation upon?

A. Upon the taxation as I understand it to be.

105. What do you understand it to be?

A. Something like $5500 per year or thereabouts.

106. Upon what valuation?

A. I don't know as to the valuation, I am just giving the lump sum.

107. Look at the map of the city of Peoria now shown you and state whether or not there are any gas mains of the Peoria Gas & Electric Co. located north of Adams street and south of Spencer street in the city of Peoria, and did you base your estimate upon any pipes being laid in that locality?

Objected to as immaterial and not cross examination.

A. Yes sir, I think there are some in this locality here marked on the plat "6th ward"; I noticed there were mains on Spencer street, on Adams street, on Persimmon, on Elizabeth, on Franklin, Main and Forsythe streets—all around in this locality here.

108. Is Elizabeth street in that locality?

A. Elizabeth street is, I think, somewhere in that locality.

109. At a rate of manufacture of 500,000 cubic feet of gas per day, how much would be the total amount of gas manu-
329 factured in the year of 365 days?

A. I am not here to make such figures; I am in a hurry to get away but I will give you a rough estimate on it.

110. Would not the total amount be 182,500,000 cubic feet?

A. About that, somewhere round there.

111. You state that you were told that the taxes paid by the complainant company amounts to $5500.00 per year, what would that make the cost per thousand cubic feet of 182,500,000 cubic feet—would it not be 3 cents per thousand cubic feet?

Objected to as immaterial, not cross examination, irrelevant and frivolous.

A. In arriving at the price, which I placed as a fair cost price for the gas manufactured in the city of Peoria, my figures were not based on a make of 500,000 cubic feet per day but on a make of about fifty millions per year.

112. Would not the taxes represent in your estimation about 3 cents per thousand cubic feet where the total amount of gas manufactured in a year amounted to 182,500,000 cubic feet?

A. I am basing it upon whatever the taxation might be; I could not tell.

113. You mentioned $5500.00?

Ans. When I did that, I had in view the make of fifty millions per year.

113. Basing the taxation at $5500.00 per year and the total manufacture of gas by the Peoria Gas & Electric Co. at 182,500,000 cubic feet per year, would not the cost per thousand feet for taxation purposes be represented by 3 cents?

Objected to as immaterial and frivolous.

A. I should say that would be a fair amount on the basis you put it.

Adjourned by agreement until Tuesday, November 26, 1901 at 9:30 o'clock a. m.

330 United States circuit court room, Government building.

PEORIA, ILL., TUESDAY, *November* 26, 1901—9.30 a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner; Mr. W. T. Irwin and Mr. E. C. Ritsher, appearing for complainant; Mr. Henry Mansfield, appearing for defendant.

EDWARD G. PRATT, called on behalf of the complainant, being first duly sworn, deposes and says:—

Direct interrogatories by Mr. RITSHER:

1. State your name, age and residence.

A. Edward G. Pratt; 45; Des Moines, Iowa.

2. In what business are you engaged?

A. Manufacturing and selling of gas.

3. What position do you hold in that business?

A. I am the president and general manager of the Capital City Gas Light Co. of Des Moines, Iowa.

4. Are you familiar with the business of the manufacture and sale of gas?

Ans. I am.

5. And are you also familiar with the different processes which enter into the manufacture and sale of gas?

Ans. I am.

6. How long have you been connected with the manufacture and sale of gas and in what capacities—state in detail as nearly as you can?

A. About 25 years. I started in the gas business about 1875 at Newton and Watertown, Mass., cleaning street lamps; I did that for a year and a half; I went from there to Providence, R. I. and two years of the time I was there I was night clerk at the works and for the two succeeding years, I was night foreman; after that I went

to Newport, R. I., and for a year was superintendent of dis-
331 tribution; the following year I became the assistant superintendent of the Newport, R. I., Gas Co. and served in that capacity for about a year and a half; from there I went to North Attleburg, Mass., as superintendent of the North Attleburg Gas Light Co. and served in that capacity for four years; from there I went to Des Moines, Iowa, as manager of the Capital City Gas Light Co. and have been there 14 years; during the past 4 years I have been the president of said company as well as the general manager.

7. What are the different processes in general use throughout the United States for the manufacture of gas to be sold through a general distributing system laid in the streets for illuminating or fuel purposes?

A. I assume you do not care for any of the small minor processes; of course there are an innumerable number of processes but what you want are the fundamental processes.

8. Yes sir.

Ans. Coal gas and carbonated water gas.

9. Describe in general terms the natures of those two processes?

A. Coal gas is a gas produced by the destructive distillation of coal that will yield gas having in mind coal that will yield the most gas, the best coke and containing the smallest percentage of impurities; this coal is placed in retorts or ovens which are externally heated by means of some fuel, either coal, coke or gas; the gas is driven off from the coal, which has been previously placed in the retorts, into what is known as standpipes; then into hydraulic mains, thence through condensing, scrubbing, purifying and measuring apparatus, and finally finds its way into the storage holder. That in brief is a description of the manufacture of coal gas. Coal gas might be distinguished from water gas in that its production
is constant and steady, that is to say, the gas is being
332 produced all the time. To distinguish the manufacture of water gas from that of coal gas I will say, that process is intermittent, that is to say, there is a period of time when gas is made and another period of time when the apparatus is being put in condition to make gas. Briefly, in the types of water gas apparatus in general use there is what is known as a condenser in which the primary fuel is placed, the carbonaters into which the heat from the generator is driven by means of an engine and blower, the superheater into which the heat is still further driven by the manipulation of valves from the generator and carbonator into the superheater and in which the gas is finally fixed as a salable product. Now, in the generator fuel is placed, either coal or coke, fire is started, and the condition of the coal or coke is perfected by means of a blast introduced, or brought to such a temperature, that by the introduction of steam in the bottom of the bed of fuel and its passage through the bed of fuel the hydrogen or blue gas is made; by means of blasting pipes and valves, and the manipulation of valves, heat is carried over from the generator into the carbonator and super-

heater; this heat can be regulated to most any degree to suit the trained eye of the gas maker; ordinarily the temperature in the carbonator is several degrees higher than that in the generator and the temperature in the superheater is less than that in either the carbonator or generator. Simultaneously with the introduction of steam in the bottom of the generator oil, either crude or nap-tha, is introduced into the top of the carbonator; hydrogen or blue gas goes over into the carbonator and mixes there with the rich gasses generated from the oil and together they pass on through the superheater where they are converted into a fixed gas, thence through a washing box, scrubbers and condenser and into what is known
333 as a relief holder; from there the gas is usually brought back to a point midway between the generating apparatus and the holder by means of the exhauster and finally delivered through the station meter into the storage holder.

10. Please give a brief history of the origin and development of the business of manufacturing and selling gas covering its use both as an illuminant and as a fuel?

A. I may get a little bit mixed on my dates but I think in 1777 William Murdock of England first discovered that from coal placed in an ordinary cast iron kettle and subjected to heat, gas would be generated; I think some four years later he perfected a very crude apparatus for the manufacture of coal gas by putting coal into a cast iron vessel subjecting it to heat and lighting his own house; I think it was in 1836 that the first coal gas was manufactured in New York city; in 1837 coal gas was manufactured in Philadelphia and about 1847 the first gas, I think, was made in Chicago.

(The MASTER:)

11. Was that the time of the first manufacture of coal gas in Illinois?

A. Yes sir: 1847, I think; it may be two or three years one way or the other but I think that is practically the date. Originally the retorts used in the manufacture of coal gas were made of cast iron; owing to the fact that they were very destructible, very expensive and impracticable to raise the heat to a point from which all of the gas could be taken from the coal, clay retorts were produced; I think that was about 20 or 25 years ago; the benches containing the retorts and retort furnaces originally were simple in their construction, the heat being derived primarily, and almost solely, from the fuel consumed in the furnace; these furnaces and the benches, or settings in which the retorts are placed, have been made from time to time principally in the size, shape, number of
334 retorts and the construction of the furnaces, with a view of getting the best combustion of fuel used and the best distribution of heat generated, together with the best distribution of the coal placed in the retorts, from which gas is to be produced; clay retort benches, originally consisted of but three retorts, frequently but two; but in more recent years, as a general rule, either five or six retorts,

conforming to the size of the city or town, the number of benches required and the quantity of gas to be produced; in more recent years there has been constructed what is known as a regenerative and a recuperative bench of furnaces, the object being to reduce the fuel consumption and utilize the materials produced about the works with as little loss as possible. That is to say, in the drawing of a charge of coke from a retort, from which the gas has been extracted, instead of the delay and expense of drawing coke in wagons, hauling it off into the yard, quenching it and returning the same to the retort house, this coal is drawn directly from the retorts, or as much of it as is required, into the furnaces; there is, therefore, no loss of heat or energy in bringing the condition of the coke from that cold condition, which would be the case if taken into the yard and weighed as compared with the condition of fuel when drawn from the heated retorts from which the gas had been extracted; this regenerative bench is so perfect in its construction that the primary air, which is taken in through under the grate bars and through air ports provided for the purpose, has to assist in the primary combustion of the coke, but there is also a provision for the conducting of secondary air through ports and ducts which conduct this air, by means of a circuitous route about, around and above the furnaces, and finally finds its way into the combustion chamber, in which chamber, any gasses that may have escaped the primary
335 combustion chamber, are certain to be consumed in the secondary combustion chamber. These benches are constructed for either 6, 8 or 9 retorts, the advantage in having a large number of retorts in a bench is economy of space and the heating of a large number of retorts with practically an equivalent amount of fuel, because the closer such apparatus is placed the better the general results obtained. I think I have covered pretty well the construction of the bench unless you want me to go into the arrangement of mouth pieces, stand pipes and hydraulic mains.

(Mr. RITSHER:)

12. I think that is sufficient for the present. With what different coal plants are you familiar and what different plants of that character have you seen and examined during the last 25 years?

A. With my own at Des Moines, Iowa; Minneapolis, Minn.; Milwaukee, Wis., Kansas City, St. Joseph, Mo.; Ottumwa, Iowa. To keep in mind all the works that are just manufacturing coal gas is hard—Providence and Newport, R. I., Lynn, Charleston, Mass.; Atlanta, Ga.; Philadelphia, Pa. Those are about all that occur to me now.

13. Have you examined the plant of the Peoria Gas & Electric Co. in the city of Peoria?

Ans. I have.

14. Please describe the works of the Peoria Gas & Electric Co. with reference to the buildings, machinery and equipment constituting the physical manufacturing plant.

A. Do you want me to describe it off hand or from a plat?

14. Suppose you describe it from your recollection first.

A. As I remember the plant, it has two large frame coal and coke storage buildings, one I believe having a capacity of about 6,000 tons and the other about 4,000 tons; these building are conveniently placed with respect to railroad sidings for the easy and convenient unloading of coal and the loading of coke. It has a retort
336 building of brick, the dimensions of which are not quite clear in my mind without reference to my notes; this building is ample in size for 7 benches of 9 retorts each; it has a tile roof well supported with trusses and girders and a floor with steel and iron supports and trusses finished in tile and brick; it has a building used for boilers, ammonia apparatus, exhaustors and engines, condensers, scrubbers, tar separator, purifyers, elevator, and engine for operating elevator; it has also a building in which there is a station meter for measuring the gas made at the works; also a storage holder of about 300,000 cubic feet capacity erected in a steel tank which tank is erected on a suitable foundation of concrete; it also has a building containing office, meter and shop room, pipe and fitting room, meter testing room, room for storage for stoves, meters and appliances, and a building for the storage of small pipe fittings and specials; attached to and forming a part of the retort building is a brick and steel smoke stack; in addition to the buildings described there is the yard connections, drainage and sewer pipes, water, gas and steam pipes. That is about all I think of now.

15. Have you mentioned whether or not there were any tar or ammonia wells?

A. It has just occurred to me that I omitted to mention the tar tank, ammonia tank, oil tanks, water well and well for the ammoniacal liquor.

16. Look at the plat now shown you which has been offered in evidence and marked Exhibit "1," examine the same and state whether or not it is a fair representation of the plant of the Peoria Gas & Electric Co. which you have just described?

Objected to because the plat Exhibit "1" does not show the size of the buildings and for that reason it would be only evidence for the purpose of showing the location of the buildings.

337 A. This plat marked Exhibit "1" agrees with my notion and remembrance of the location of the buildings, the general lay-out of the side tracks and the relative location of different buildings to each other with respect to the location of the real estate.

17. Are you acquainted with the general location and size, improvements and topography of the city of Peoria?

A. I am in a general way.

18. Assuming that the population of the city of Peoria and the territory tributary to the plant of the Peoria Gas & Electric Co. was in the spring of 1900 about 60,000 inhabitants; and assuming

that the city is located upon the westerly bank of the Illinois river gradually sloping and rising westerly for the distance of a mile and a half or thereabouts and extending along the Illinois river for a distance of about 4 to 4½ miles, with the gas plant located about the center thereof on the bank of the river, would the size and character of the plant of the Peoria Gas & Electric Co. as described by you and shown upon Exhibit "1," be, in your judgment, a proper plant to be constructed in the city of Peoria during the year preceding September 1, 1900?

A. If it were the first works constructed here and if it were the only works in existence, I would say the works were not constructed large enough for a city the size of this, but in view of the conditions which I understand to exist, that is, the presence of another company in this city, I would say that the works were very judiciously constructed with respect to location, etc.

19. What, in your judgment, is the character, size and capacity of the plant of the Peoria Gas & Electric Co. with reference to judicious investment and outlay as appears from the nature of the plant as seen by you and the size, character and location of the city, assuming the plant was constructed during the year preceding
338 September 1, 1900, substantially upon the plan shown in Exhibit "1"?

A. I should say that the works were modern in every respect and built with a view to economical and efficient operation.

20. Assuming that at the time of the construction of the plant of the Peoria Gas & Electric Co. the population of the city of Peoria and the territory tributary to said plant was about 60,000 inhabitants; and assuming also that at the time Youghiogheny coal could be furnished and delivered at the works at about $2.80 per ton; and assuming further, that at the same time there was a local market for coke at the average price of $3.25 per ton, that the tar bi-product could be sold at an average price of 5 cents per gallon, that the ammonia by-product could be sold at the average price of 8 cents per pound, that cannel coal for enriching could be bought for about $3.00 per ton, and that gas oil for making water gas could be bought at about 3¾ cents per gallon, and that coke suitable for water gas making could be bought for about $4.00 per ton, and that the company was not bound by any requirement as to the candle power of gas to be furnished, would it have been more expedient during the year preceding September 1, 1900, to have erected a coal gas plant or water gas plant and why?

A. By all means I should say a coal gas plant owing to the peculiar conditions of being able to purchase coal at a very reasonable figure and being able to find a ready market for the coke, tar and ammonia. I understand there are some peculiar advantages here in the production of the coke, that there are some manufacturing industries here that use it generally and the comparative cost of gas coal with that of oil and the fact that there are no residual products in the manufacture of water gas would certainly decide for me

the question beyond doubt that coal gas would be the cheaper
339 and better to make in this community.

21. Are you familiar with the cost during the years 1899 and 1900 of the various items of labor, machinery and materials entering into the construction of a gas plant of the capacity and equipment of the plant of the Peoria Gas & Electric Co.?

Objected to unless limited to the city of Peoria and also because no foundation has been laid.

A. I am.

22. From your examination of the plant of the Peoria Gas & Electric Co. as shown on Exhibit "1" and from your knowledge of the plant and from your knowledge of the cost of construction of similar plants, are you able to state what would be the reasonable cost of the plant and improvement of the Peoria Gas & Electric Co. if constructed during the years 1899 and 1900?

Ans. I am.

23. From your examination of the plant of the Peoria Gas & Electric Co. and from your knowledge of the cost and price of labor, machinery and materials, please state what, in your opinion, would be the reasonable cost of the construction of said plant fully equipped, tested and ready for the delivery of gas to consumers; assuming that the plant was contracted for and erected during the year preceding September 1, 1900, excluding from your estimate the cost of the real estate and also excluding the cost of mains, services and other expenses outside of the construction and equipment of the manufacturing property; and assuming further, that the price of ordinary labor was $1.50 per day, and in your estimate please give itemized statements of costs so far as seems best?

Objected to because the witness has not shown any qualification to answer as to the cost of materials laid down in the city of Peoria which entered into the construction of the plant.

A. (Witness referring to memorandum.) Coal and coke
340 storage $10,450.; retort building $9,145.; boiler house, condensing house and purifying building $12,000.; seven benches of 9 retorts each $24,500.; one brick and steel stack $2500.; two boilers of 100 horse power each with settings $3500.; steam and water connections about boilers $250.; boiler stack $350.; ammonia apparatus $2500.; fixing bench $2000.; one dry condenser $1200.; two exhausters and engines $1500.; one P. & A. tar extracter $350.; one tar separater $250.; one other dry condenser $1200.; two water condensers $2,500.; one washer $750.; two scrubbers $2,500.; 9 pumps $1950.; foundation for apparatus, taking in all the apparatus I have mentioned, condenser, scrubbers, tar separater, exhausters, exhausting engines and pumps $1750.; two purifyers 24 x 24 $5000.; carriage for handling and conveying the same $1500.; center seal and connections $1,000.; elevator and engine for handling purifying material $350.; meter house $935.; meter and connections

$3,000.; office building, meter shop, store room and appliances — store room $4077.50; gas holder and tank $33,000.; concentrator, wells and tanks, including tar well, ammonia well, concentrator, nap-thia tank, water feed tank and water well $5775.; yard connections for gas, including pipe, specials, valves, drip pots, etc. $5,000., drains and sewers $1200.; Connelly governor $1250.; photo meter and chemical apparatus $850.; gas, steam and water pipes about works $2,000.; tools, $3500.; furniture and fixtures at works $1000.; making a total of $151,057.50, to which I have added 10 % for plans, specifications and superintendency of construction $15,105.75, making the total estimate of costs of works $166,163.25.

24. Does the totals as given by you of $166,163.25 constitute in your judgment, the fair market cost value of that plant on September 1, 1900, assuming that some one wanted it for the manufacture and delivery of gas?

341 A. In my judgment it does.

25. Have you examined the city of Peoria with reference to its streets and alleys in which mains are laid?

Ans. I have.

26. In what manner did you acquire your information in regard to the streets and alleys in which mains are laid?

A. I first studied the maps and records showing the streets in which mains have been laid and the location and afterwards spent the afternoon in riding over the city and over the streets where mains had been laid.

27. Who accompanied you on that drive?

—. The superintendent of distribution of the Peoria Gas & Electric Co.

28. Did he point out to you the streets and alleys upon which mains were laid?

Ans. Yes sir.

29. The map and records you speak of were where?

A. At the office of the company.

30. Were you also advised as to the size and lengths of the various mains and services laid by the company?

Ans. Yes sir.

31. Where did you acquire that information?

A. From the maps and also from the records of the company.

32. Who gave you that information?

A. The superintendent of distribution, I don't remember his name showed me the records and gave me the information.

33. What data did you so receive with respect to the size and character of the mains and services—will you kindly give us what you understood to be the size, length, etc. of the mains and services?

A. (Witness referring to memorandum.) 1758 feet of 16 inch cast iron pipe; 20768 feet 12 inch ditto; 3484 feet of 10 inch ditto 20,229 feet of 8 inch ditto; 12,874 feet of 6 inch ditto; 80,852 feet of 4 inch ditto; and 260 feet of 2 inch, making a total of 140,223 feet

342 or 26 55 / 100 miles.

The service connections were as follows :—872 feet of 3 inch

wrought iron pipe; 374 feet of 2½ inch ditto; 37,244 feet of 2 inch ditto; 111,369 feet of 1½ inch ditto; 29,393 feet of 1¼ inch ditto; making a total of 2425 services or 179,252 feet of wrought iron pipe of the different sizes.

34. Assuming that the mains of the Peoria Gas & Electric Co. are of the sizes and lengths as stated by you in your preceding answers and that the same were laid during the year prior to September 1st, 1900, in the streets and alleys in the city of Peoria pointed out to you by the superintendent of distribution of said company and shown by the records of the company examined by you, and assuming that the cost of ordinary labor during the year preceding September 1, 1900, was $1.50 per day, please give an estimate of the fair and reasonable cost of laying the mains of the Peoria Gas & Electric Co. including labor, materials, cost of repaving streets and all other expenses incident to laying said mains ready for use?

Objected to as immaterial, incompetent and founded upon hearsay evidence.

A. "Witness referring to memorandum.) 1758 feet 16 inch pipe at $2.25 per foot $3,955.50; 20,768 feet of 12 inch pipe at $1.65 per foot $34,267.20; 3482 feet of 10 inch pipe at $1.25 per foot $4,352.50; 20,229 feet of 8 inch pipe at 95 cents per foot; $19,217.55; 12,874 feet of 6 inch pipe at 65 cents per foot $8,368.10; 80,852 feet of 4 inch pipe at 45 cents $36,383.45; 260 feet of 2 inch wrought iron pipe at 25 cents $65; making a total for the pipe of $106,609.25. Then I have added to that for valves and valve boxes $5,330.46, making the total cost for laying these mains, provided they were laid in
343 streets not paved, $111,939.71. Then to that I have added the cost of laying a certain portion of these mains in paved streets which portion amounts to 38,200 feet at 80 cents per foot, amounting to $30,560, making the total cost of mains, laying, labor and all material, $142,499.71.

35. Assuming that the services of the Peoria Gas & Electric Co. are of the size and length stated in your previous answer, and that the same were laid during the year previous to September 1, 1900, and assuming that the cost of ordinary labor during the year preceding September 1st, 1900, was $1.50 per day, please give an estimate of the fair and reasonable cost of the services of the Peoria Gas & Electric Co. including labor, materials and all expenses incident to laying such services ready for use.

Objected to same grounds as before.

A. I estimate that 179,252 feet of wrought iron service pipes of the different sizes mentioned cost on an average 20 cents a foot for the pipe and labor or $35,850. To that I have added for service boxes and shut offs $2425., making a total of $38,275.

36. Assuming the premises heretofore given with regard to the plant and mains of the Peoria Gas & Electric Co., what in your opinion would be the fair and reasonable cost of the service tools and

equipment required by said company for use in street construction of such plant as it existed according to the premises on September 1st, 1900?

A. Including tools, carts and wagons $6500.

37. What in your judgment would be the fair and reasonable cost for equipping and organizing the office of the Peoria Gas & Electric Co. including the expense of office equipment, books, etc. for the purpose of operating the gas business of the plant you have described as said plant existed September 1, 1900.

344 A. $12,500.

Mr. MANSFIELD: The defendant moves to exclude the foregoing answer because the witness has shown no knowledge as to the cost of equipping an office or the cost of the books that pertain to an office.

38. Were you given data as to the number of meters?

A. Yes sir.

39. How many were there on Sep. 1, 1900?

A. 1758 was the number given me.

40. Assuming then that on September 1, 1900, the meters of the Peoria Gas & Electric Co. were 1758 in number, what in your opinion would be the value of said meters and the cost thereof at that time?

A. I have itemized it as follows:—412—3 light at $6.00 $2472.; 1228—5 light at $7.50, $9.210.; 85—10 light at $10.00, $850.; 20 lights at $15., $150.; 14—30 lights at $25., $350.; 6—45 lights at $40., $240.; 1—60 light $50.; one-100 light $100.; 1—150 light, $150.; making the total value of the meters $13572. To this I have added for lead pipe connections $1758., making a total of $15,330.

41. In your estimate heretofore given as to the cost of the plant, mains, services, etc. of the Peoria Gas & Electric Co., have you included in your estimate any amount for the legal organization of the company, the equipment and organization of its business force, cost of advertising, soliciting, and the general expense of putting said plant into operation?

A. I have not for the reason I have no means of getting such information; the conditions would be so different in different places.

42. In these figures you have given you gave no estimate
345 of the cost of the real estate?

Ans. I did not.

43. It is not included in any of your totals?

Ans. No sir.

44. Are there any other estimates which have been made by you for which I have not called. In other words are there any estimates I have not covered by some of my questions that you took into consideration?

A. No, I think I have checked them all.

46. Assuming that the Peoria Gas Light & Coke Co. commenced the manufacture and delivery of gas to consumers May 1, 1900, and assuming further that on or about September 4, 1900, it was manu-

facturing and selling coal gas at the rate of about fifty millions cubic feet per year and that the length and character of its mains and services conformed to the figures given in your previous testimony and that the cost of Youghiogheny gas coal at the works of the company was about $2.80 per ton and that the cost of boiler coal was about $1.10 per ton, that the wages of ordinary labor were $1.50 per day, and the wages of general stokers were $65.00 per month and $70.00 per month for head stoker; assuming further, that coke could then be marketed at an average price of $3.25 per ton, breeze at the average price of $1.00 per ton, tar at the average price of 5 cents per gallon, ammonia at the average price of 8 cents per pound, retort carbon at the average price of $12.50 per ton; assuming further, that the purchase of materials in general and the expenses of the general operation of the plant were fair and reasonable, considering the location of the plant, and that the management and superintendency of the plant was efficient and competent, what in your opinion would be the actual cost per thousand cubic feet of the gas manufactured and delivered to consumers by said company on Sep.
4, 1900, excluding in your estimate the value of residuals
346 and excluding also any charges for depreciation or interest on the investment?

A. My estimate would place it at 85 cents per thousand cubic feet.

46. In your estimate do you consider that the plant at that time was in operation a sufficient length of time to put into smooth operation the economies of which it was capable?

A. No sir, I should say not; it would take some time to get the work settled down, force organized and in a condition to get the best results.

47. What general changes, if any, have taken place during the past 10 or 15 years in the method of the management and operation of gas properties which affect the cost of the delivery of the gas from the holder of the company to the consumer, and in what way do such changes effect the cost of such delivery?

A. I would suppose that question had more reference possibly to questions of policy than methods.

48. That was my idea if there were polices in general force and recognized by the gas fraternity as proper policies to be pursued?

A. It does not seem more than 12 or 15 years ago when men in charge of gas business seemed to be satisfied with taking care of what business came to them. That is to say there was no effort made to extend the mains to conform to the growth of cities and towns and no great effort made to extend the use of gas after the mains were laid unless there was a promise on the part of the consumer or consumers in certain localities to use a certain quantity of gas before the mains were laid, or before any effort was made to get the business; but the gas business in more recent years, more especially during the past 8 or 10 years, has become more of a mer

cantile business. That is to say, the progressive gas man of
347 the present day exerts himself and uses every means and
methods possible to find a market for his product and there is really more attention given now by progressive gas managers to find a sale for the product than there is in the manufacture of it. The manufacture of gas has become, it would seem, as greatly reduced as possible, the saving made at the works and inattention to detail and saving here and there of some slight waste which might amount to a fraction of a cent, but the principal thing now is to secure a market for the product and the energy which is displayed by some gas men in certain cities and many cities is remarkable. The gas manager at the present time is not an up-to-date manager unless he exerts himself at all times to get all the business it is possible for him to get. At the present time money is spent in advertising, in soliciting, in making displays and in demonstrating, by means of agents employed, how gas can be used and how it can be used economically and effectively more especially with a view to its use as a fuel, seemingly stopping at nothing that will extend the use of gas for all purposes.

49. What effect has this policy had, if any, upon the cost of delivery as compared with the cost of delivery 10 years ago?

A. It has greatly increased the cost of distribution.

50. In your testimony this morning, you stated in answer to a hypothetical question that under certain conditions therein named the cost of the manufacture of gas on September 4, 1900, would be 85 cents per thousand cubic feet—in fixing that figure as I understand you, you did not deduct the value of the residuals?

A. I did not.

51. Assuming that the Peoria Gas & Electric Co. commenced the manufacture and delivery of gas to consumers on May 1, 1900, and
assuming further that the length and character of its mains
348 and services conformed to the figures given in your previous
testimony, and that the cost of Youghiogheny gas coal at the works of the company was $2.80 per ton, that the wages of labor were $1.50 per day for ordinary labor, $65.00 per month for general stokers and $70.00 per month for the head stoker; assuming further that coke could then be marketed at $3.25 per ton, breeze at $1.00 per ton, tar at 5 cents per gallon, ammonia at 8 cents per pound, retort carbon at $12.50 per ton; assuming further that the purchase of materials in general were at fair and reasonable prices, considering the location of the plant and that the management and superintendency of the plant was sufficient and competent; and assuming further that from May 1, 1900, to September 1, 1900, there was manufactured about 18,942,213 feet of gas and that the leakage during that period was about 3,467,000 cubic feet, what in your opinion would be the actual cost per thousand cubit feet of the gas manufactured and delivered to consumers by said company during the first 4 months of its operation without deducting the value of residuals

and excluding from your estimate any charge for depreciation or for interest on the investment?

Objected to as immaterial and incompetent.

A. In the starting of new works, such as those works were, it would require some little time to get the help organized, to get the benches and retorts in good operative condition as well as getting the rest of the apparatus down to a point where it would do its work efficiently and effectively besides excluding all the air from the mains about the works and the apparatus about the works, the gas holder and the street mains. The cost during the first 4 or 5 months would be considerably in excess of what it would be after everything was in good working order and I would place that cost at $1.19 per thousand cubic feet at the point of combustion—the burner.

349 52. What candle power in coal gas is deemed most satisfactory for ordinary use by the consumer?

A. From 16½ to 18.

53. What candle power in the case of water gas is required to give the public a service as satisfactory as 18 candle power in coal gas?

A. I should say 22 candle power carbonated water gas would be the equivalent of 18 candle power coal gas.

54. What elements and forces of any kind contribute to the depreciation of a gas plant and its mains and how do they operate and how rapidly or how slowly do the different causes operate?

Objected to as immaterial and incompetent unless it is confined to the limits of the city of Peoria.

A. There is wear and tear, destruction and deterioration going on at the works all the time, by reason of the fact and essentially in a community like this where there is so much native coal used which coal is charged heavily with sulphur impurities the iron about the works, especially the iron about the roof, in iron stacks, gutters, down spouts, everything metal-ic about the buildings being attacked by the sulphur compound constantly; in addition to that, there is the presente of ammonia about the works which is destructive to all sorts of metal work, also to the mortar in the masonry and the general wear and tear that any manufacturing plant that is subjected to the severe operation of a gas works would naturally follow; so far as the mains are concerned I do not feel that there is so much depreciation going on, I think whatever depreciation there may be as to street mains through acids in the soil, or attack of the soil upon cast iron pipe is practically compensated for by the protection that is given them by reason of the tarry matters that are in the gas which passes through the mains and finds its way to the surface of the pipe through the pores

350 in the iron; so that, in the mains proper, so far as any destructive influence is concerned, I would not count that as being very great; at the same time, in growing western cities where

the grades are changed as a general thing with every change of administration, there is the necessity of lowering the mains and in communities where possibly we had not anticipated so great a growth in the population and larger mains are necessary the smaller ones have to be displaced frequently with the expense of excavating and removing the old mains which is too great to pay to undertake, and consequently the smaller and older mains are abandoned when the new and larger ones are substituted. I have found that particularly the case in a great many western cities.

So far as the service pipes are concerned, there is a great deal of depreciation going on there; the attack of the acid in the soil upon service pipes, wrought iron pipe or steel pipe, is much more rapid than possibly would be the case on cast iron pipe; the depreciation to individual or consumers' meters depends entirely upon the composition and temperature of the gas delivered to the consumer, but the depreciation under the most favorable circumstances to meters is quite an item; I suppose no gas meter would last without some repair to some of its parts exclusive of the case of the shell of the meter longer than 12 or 15 years.

55. What in your opinion would be a proper percentage of the entire cost of construction of the plant of the Peoria Gas & Electric Co. to be charged off annually as an average annual depreciation?

A. I have made a good many figures upon that question and have given it a good deal of study and I believe that 7 per cent. is a fair average.

56. That percentage you would compute upon the cost of
351 the manufacturing plant, mains, services, meters and the entire cost of construction?

A. Yes sir, that would include everything incident to the manufacture and operation of the entire system.

57. Aside from the general depreciation, concerning which you have testified, what are some of the hazards of a gas business as an investment? I intend to cover by this question the hazard which an investor of money would take into consideration in determining whether he would invest in a gas plant or something else?

A. It is a peculiar sort of business in that respect; very much depends in the operation of a gas works upon the extreme care of the individual or individuals in charge; gas, we all know, is a dangerous substance and there are plenty of opportunities where the results in the use of gas can be destructive. For instance, employés about the works unless they are well and carefully posted, there is danger of their getting into positions or places where leakage of gas might cause asphyxiation. For instance, in the purifying house or in the valve house or pit. The same thing, of course, could extend to the use of gas by the consumer; that part of the business seems to require the constant care of somebody all the time and if a gas company escapes without serious accident to its employés it can be frequently attributed more to good luck possibly than to good judgment always because we are compelled to employ

en sometimes who have not as good judgment as we would like them
have. Then there is the question of competition with electricity,
th kerosene, isolated plants in the shape of gasoline generators,
cetaline, and then there is danger from destruction of the dis-
buting system through the instrumentality of electrolysis; there
a danger which to my mind is more important than any other,
and that is the fact that all public corporations are subjected
2 to the whims of legislative bodies in States and cities where
they are doing business. I think that covers the question.

Defendant's counsel objects to the foregoing answer as not respon-
ve and moves the court to exclude it.

58. From your experience and observation in the management
d investigation of gas plants and gas business, are you able to
ate what would be a reasonable and fair return to investors in gas
operties, taking into consideration the hazard of the investment
account of the conditions and dangers concerning which you
ave testified, and if so, state what would be a fair and reasonable
turn to investors upon the cost of the plant of a gas company,
king into consideration the hazard?

A. I should say from 10 to 12 % per annum on the investment.

59. You have spoken in answer to the last question but one in
gard to competition in its various forms, naming gasoline, kero-
ne and ascetaline, are there any other competing forms of gas?

Objected to as immaterial, incompetent, irrelevant.

A. Nothing that occurs to me now except natural gas. I entirely
verlooked that because that is a matter that I do not take into
nsideration in considering the question of artificial gas, but in
rtain sections of the country that threatens to be a very serious
ing and it has resulted seriously and disastrously to artificial gas
mpanies in a number of cities in the United States; it can be
adily understood that by the introduction, or discovery of natural
as where it is sold anywhere from 12 to 25 cents per thousand cubic
et, a gas that is several degrees hotter in its combustion than arti-
cial gas, that it would be very desirable as a fuel and that its in-
tense heat makes it also very desirable for use in connection
53 with the Welsbach burner because the greater the heat with
that burner the better the results, the higher the illuminating
alue of the burner.

(Mr. MANSFIELD:) I move to strike out that part of the foregoing
nswer referring to natural gas because it has not been shown there
any natural gas fields within such a distance of the city of Peoria
s will result in any competition there.

Cross-interrogatories by Mr. MANSFIELD:

1. You say you are president and manager of the Capital City
Gas Co. of Des Moines, Iowa?

Ans. Yes sir.

2. Were you manager of that plant at the time a similar suit to the one that is being tried here was tried in the city of Des Moines?

Ans. Yes sir.

3. Did you give evidence in that case?

Ans. Yes sir.

4. Is John R. Walsh connected in any way with that plant?

A. No sir.

5. In estimating the price of the various buildings located on the property of the Peoria Gas & Electric Co. in the city of Peoria, did you take into consideration the size of the various buildings located thereon?

Ans. Yes sir.

6. State what was the size of the brick boiler house erected upon those premises?

A. 142 feet long, 66 feet wide at one end, 62 feet wide at the other and about 41 feet in height.

7. What did you say the value of that brick boiler house was the cost of erecting it?

A. $12,475.

8. What was the size of the one story brick meter house erected upon the plant of complainant company?

A. 21 feet 6 inches by 28 feet 6 inches and about 12 feet high.

354 9. What were the footings?

Ans. Concrete.

10. How wide were those footings?

A. I did not excavate below the walls to discover.

11. Do you know what the character of footings were under it?

A. Broken stone and cement.

12. I mean how much material was placed in them in order to arrive at your estimate of the material in those footings?

A. I did not excavate to determine the depth or width of those footings.

13. You don't know whether those footings are 24 inches wide or 8 inches wide?

A. No sir; but I judged by the character of the building that such footings would be in good construction.

14. What would they be according to your idea?

A. My idea would be that those footings would be in the neighborhood of 30 inches wide at the top and at the bottom probably 36 inches; in the particular location and in that particular soil I would say those footings went down to a depth of at least 4 feet.

15. State if you know the size of the wall up to grade line?

A. You mean the foundation wall?

16. Yes sir.

A. I think I gave that in my estimate the width of the footings.

17. What was the thickness of the wall above ground?

A. 12 inch wall.

18. What did you testify that building was worth?

A. $935.

19. What did you estimate the tile roof on the retort house, purifying house, boiler house and office to cost?

A. I estimated the value of the tile roof on retort house
355 at $2000; the steel beams and flooring for the building $3000; the foundation for the building $1500.

20. What did you estimate the cost to be of the tile roof on the purifying house?

A. I have not those figures with me here but I can give it to you very closely. (Witness figuring) $3250.

21. Now on the boiler house?

A. That includes the entire building; I include purifying building, boiler house and room that contains the condensers, scrubbers, exhausters, etc.

22. Is not the boiler house the house that contains the ammonia plant?

A. It is the same building, the same room.

23. Does it also contain the dry condensers?

Ans. Yes sir.

24. And the tar extracters?

A. Yes the exhauster, exhaust engines and tar separator.

25. What did you calculate the cost of the tile roof for the office at?

A. The building proper I estimated at $1025, the roof $750 and foundation $750; that does not include any carpenter wood-work, windows, doors, etc.—add $1252.50 for that item.

26. What would you say was the total cost of the brick office?

A. $3777.50.

27. That includes what?

A. The brick work above ground, the foundation, the roof and the woodwork—carpentering; it does not however include a pipe shed that is attached to the building.

28. What was the cost of that pipe shed?

A. I estimated it at $300.

29. What was the size of that one story brick office building?

A. 103 feet long, 29 feet 8 inches wide, 9 inch walls sepa-
356 rating the different rooms.

30. What were the footings in that office building?

A. Concrete.

31. What is the thickness?

Ans. I did not excavate to ascertain the thickness.

32. In making your estimate what did you estimate their thickness to be?

A. I estimated the thickness of that foundation to be about 20 inches at the top.

33. How high was that above the ground?

Ans. 16 feet.

34. What was the size of the joists of that building?

A. I did not notice; if I remember rightly the joists were enclosed in sheathing finish.

35. In the store room attached to that what was the size of the joists if you know?

A. Do you mean the pipe shed I spoke of?

36. Yes.

Ans. That was just a cheap shed; I don't remember the size of the timber used; in a building of that size should be used 2 x 6 and 2 x 4.

37. What was the thickness of the walls above ground?

A. 12 inches.

38. You have a one story coal ware house estimated—what was the size of that building?

A. Do you mean the larger one of the two; I have designated them as No. 1 and No. 2.

39. What was the size of the largest one?

A. It was a peculiar shape, 119 feet and 6 inches on the south side, 127 feet on the west side and 44 feet wide; one of the legs on the north side—that leg was 56 feet long to an angle formed by a side running east; the width of that leg is 56 feet.

357 40. How long and high was it?

A. 75 feet 6 inches long, 30 feet high.

41. What would you say would be the estimated cost of a brick building located on the Peoria Gas & Electric Co.'s property in the city of Peoria of a size 65 feet by 38 feet 5 inches wide by 28 feet high with 36 inch footings, the wall to be up to the first floor window sills?

A. What would be the height of that wall to the first floor?

42. The average height just as they are in the buildings erected on the Peoria Gas & Electric Co.'s property?

A. I did not notice what that height was to the window sills.

43. You estimated that did you not, when you estimated that building?

A. No sir, I took the entire height of the building to the eaves, not to the windows.

44. What would be in your opinion the cost of a brick building, erected on the Peoria Gas & Electric Co.'s property in the city of Peoria of a size 29 feet 6 inches by 28 feet 3 inches, being 16 feet high with footings 16 inches wide, 12 inch wall up to grade and 8 inch brick wall up to the roof with a 12 inch column in center to support trusses?

Ans. About $665.

45. What would you estimate the tile roof on that building to be worth?

Ans. $175.

46. Was there a tile roof on that meter house?

A. I did not know you were inquiring about the meter house.

47. Is there a tile roof on the meter house of the Peoria Gas & Electric Co.?

A. My notes show there is a tile roof on that building.

48. What did you estimate that tile roof to be worth—oh you just stated that, didn't you?

358 A. Yes sir. My estimate of that particular building I gave as $150. I would like to explain, if I can, that there is a difference between figuring the value of a building having that building before you and figuring upon a hypothetical building such as you suggest.

49. How many squares of tile did you estimate it took to cover the meter house building?

A. I did not count them nor did I measure them; I looked it over and made my estimate by looking at the roof.

50. Do you know what tile sells for of the kind and character that is on the building of the Peoria Gas & Electric Co. in Peoria? the cost of the tile?

Objected to unless the question is limited to September 1, 1900. Mr. MANSFIELD: Yes: on September 1, 1900.

A. No, I would only know by having had some experience in covering similar roofs with tile.

51. What did you estimate the cost of the tile to be?

A. $150 laid.

52. How many squares of tile did it take to cover that roof?

A. I could not answer that question; I did not take into consideration the size of the tile.

53. How many squares of tile did it take to cover the retort house?

Ans. I did not estimate that; I made my estimate just as I did on the other building; I looked the roof over and took into consideration the size of the building.

54. Did you take into consideration any slope in the roof?

A. Not necessarily, no sir.

55. What did you take into consideration in arriving at the dimensions of that roof?

A. The size of the building and the size of the roof.

359 56. What was the size of the roof?

A. I have no memorandum as to the size of that roof; I have given you the size of the building.

57. Is this in your opinion a fair estimate of the cost of those buildings or is it a mere rough estimate as made by you from the appearance of the building?

A. I consider it a very fair and very conservative estimate of the value of the building.

58. What would you estimate the cost to be of a concrete foundation for a gas holder whose diameter, or the diameter of the foundation, was 78 feet 8 inches on September 11, 1899, in the city of Peoria, if you know?

A. You have no reference to this particular holder?

59. Yes sir, I have, that was constructed just about that time.

A. The concrete foundation for that particular holder in my judgment would be $5625.

60. How deep does that foundation go down?

A. I did not excavate to see but I made some particular inquiry as to the nature of that foundation and as to the depth of the concrete and I understand that on one side the concrete extends to a depth of about 11 feet: I asked that same question myself because I was a little suspicious that in that particular locality a good deal of attention would have to be given to the foundation.

61. How deep was it on the other side?

A. On the opposite side from where they had to go so deep?

62. Yes, what was the average depth of it?

A. If there were no peculiar reasons or peculiar circumstance why the foundation on the other side of the holder should be excessive, I would say that a foundation of 6 feet would be about right; I understand it was 11 feet on one side.

360 63. What did you consider the average depth of it to be in making your estimate?

A. I did not figure it in that way. I simply figured what the tank with the sort of foundation and depth of foundation a tank of that description would need under favorable circumstances and conditions.

64. How did you arrive at the amount of concrete which would be necessary to go in that foundation?

A. I arrived at it in another way.

66. Upon what did you base your estimate on the amount of concrete that went in there?

A. From the diameter of the tank and the depth of concrete.

67. What kind of cement did you consider that foundation was made of in making your estimate?

A. The best Portland cement.

67. About how many cubic yards of concrete was there in that foundation to the best of your knowledge?

A. Unless I have made some mistake I estimate there would be 75,501 cubic yards.

68. What was the estimate you placed upon that concrete per cubic yard in Peoria?

A. I did not estimate it in that way; I did not go into the details in this way.

69. What in your judgment would be the cost of concrete per cubic yard made of the best Portland cement and best stone and mixed with whatever sand was necessary to make it of the proper consistency?

A. I think such work would cost not far from $1.90 per cubic yard.

70. In September 1899 what would be the estimated cost of a brick building 42 feet 6 inches by 107 feet 4 inches by 30 feet high,

361 the first 10 feet a 16 inch wall on concrete foundation, the upward 20 feet a 12 inch wall with 16 inch pilasters every 13 feet to support the roof, the concrete footings being 36 inches?

A. Have you reference to any of the buildings I have mentioned here?

71. I am asking about the buildings described in my question.

The MASTER: What would be your estimate of the cost of that building at that time?

A. I thought I could save time if Mr. Mansfield was referring to any particular building about the works, by referring to the estimate. (Witness figuring) $3,237.84.

72. What would you estimate the cost to be of a frame building 84 feet 3 inches by 166 feet, outside footings 30 by 30 inches, footings for post 48 x 48 inches, with stone caps 22 inches by 22 inches by 10 inches thick, posts 8 x 8 inches, truss posts 10 by 10 inches, roof rafters 2 inches by 8 inches, and 18 inches in the center, the outside to be made 12 inch plain dressed lumber, shingle roof?

A. I should judge that is what is known as No. 2 coal shed. $9500.

73. In estimating that building, what kind of shingles did you consider were placed on the roof?

A. My observation would be that they were about No. 2 shingles, what builders would term "A Star A."

74. What were those "A Star A" shingles worth in Peoria in September, 1899?

Ans. I don't believe I can answer that.

75. About how much were they worth according to your estimate?

A. You mean by the bundle or the total number of shingles?

76. The total number of shingles?

A. About $750. laid.

362 77. What would you estimate the cost to be of a one-story shed of the following dimensions:—58 feet by 125 feet by 20 feet high, brick piers for footings 5 feet by 5 feet, iron plates 20 inches by 20 inches by one inch thick and posts 12 inches by 125 inches, roof girder 6 inches by 12 inches, rafters 2 inches by 8 inches by 16 inches in center, gravel roof, braces 6 x 6 inches, all anchored together with 1⅛, 8 inch rods and all boarded up inside with 2 inch plank, all the way up.

A. Do you want just the cost of the building on foundation?

78. Yes sir, including gravel roof.

A. About $3250.

79. What would you estimate the cost of a gas holder to be in the city of Peoria in September, 1899, 78 feet 6 inches in diameter and 32 feet high?

A. Do you mean the holder exclusive of the tank and foundation?

80. No, including the tank but not including the foundation.

A. That is not this particular tank that I have already testified to?

81. I don't know whether it is or not?

A. I thought I could correct you possibly in the dimensions you

have given me, if you meant this particular holder; if you want me to figure on another holder, it means quite a good deal of figuring. (Witness figuring) The holder to be located in the particular place where the holder of the Peoria Gas & Electric Co. is located down there?

82. Yes sir.

A. $26,070; that includes the same general rule I have applied in adding 10 per cent. for plans and specifications and superintendency of construction.

363 83. Would you add that 10 per cent. for plans, specifications and superintendency in the event that the manager of the company was superintending the erection of the plant and was paid a yearly salary for so doing?

A. No sir, not if he prepared all his own estimates and plans which is a very unusal thing; as a general thing the manager of a gas company has nearly enough to do without preparing plans and estimates.

84. Is it not a fact where a holder is contracted for that the people from whom the holder is purchased or who contracts for putting up the holder puts it up themselves?

A. No sir, it is very seldom that the people who contract for the building of the holder built the holder tank; that part of the work is the most particular of any, the construction of a tank that is absolutely tight and it is usually done under the supervision of the manager or superintendent in charge and by some careful man who has had experience in that sort of building; it is a peculiar business in itself, the construction of holder tanks—I refer more especially to the construction of holder tanks where constructed of brick or concrete and not steel tanks; where steel tanks are used the holder builder usually constructs the tank.

85. Is this a steel tank here?

A. Yes sir, but they have nothing to do with the construction of the foundation; their interest only extends in the direction of the holder proper.

86. You did not include the foundation for this holder I asked you about in your estimate did you?

A. Yes: on the average foundation of a steel tank.

87. In making your estimate of the cost of the mains of the
364 Peoria Gas & Electric Co. in the city of Peoria, what did you estimate the cost per foot of the 16 inch main to the company in 1899 laid down in the city of Peoria—how do they sell that pipe?

A. By the ton. I was going to say I have not a schedule of the weights of different sizes of pipes with me but have it at the hotel; I can give you the cost of the pipe laid including all labor or I can give you the estimated cost per ton at that time.

88. What was the estimated cost per ton?

A. $26.50.

89. What was the estimated cost per ton for the 12 inch main f. o. b. cars in Peoria?

A. I would like to correct my last answer; the price I gave was the average price for all sizes of pipe; the 16 inch pipe would cost about $23.75 per ton f. o. b. Peoria; the 12 inch pipe $24.25 f. o. b. Peoria.

90. What was the estimated cost of the 10 inch, 8 inch, 6 inch and 4 inch pipe f. o. b. Peoria per ton?

A. The 10 inch $26.00; the 8 inch $27.25; the 6 inch $27.50 and the 4 inch $27.75.

91. In making up your estimate how many tons did you estimate the 16 inch pipe weighed?

A. Those cast iron pipes are all furnished by standard weight for different sizes of pipe and I went entirely by the schedule in figuring the weight of that pipe, and I have not the schedule for the weights of the larger sizes per foot. The 16,12 and 10 in. sizes; the 8, 6 and 4 inch pipe weights I can give you and I have the other information at the hotel and will furnish it later.

92. What was the diameter of the service pipe you testified to this morning as laid by the Peoria Gas & Electric Co. in the city of Peoria?

A. There were several sizes, viz: 3 inch, 2½ inch, 2 inch, 1½ inch and 1¼ inch.

365 93. What were the number of the different sizes?

A. There were 3 3 inch; 2 2½ inch—652 2 inch; 1502 1½ inch; and 266 1¼ inch.

94. Was there any 1 inch service pipe?

A. None mentioned, no sir.

95. What was the price per foot of the 3 inch service pipe f. o. b. Peoria laid by the Peoria Gas & Electric Co. as of date October, 1899?

A. The 3 inch pipe would cost 28 cents per foot.

96. What was the cost per foot of the 2½ inch, the 2 inch, the 1½ inch and the 1¼ inch service pipe f. o. b. Peoria as laid down by the Peoria Gas & Electric Co. in October, 1899?

A. The 2½ inch 22 cents per foot; the 2 inch about 16 cents per foot; the 1½ inch about 11 cents per foot and the 1¼ inch about 8 cents per foot.

(The MASTER:)

97. Are those the market prices?

A. That is about the average market price as I remember at that time; pipe is an article that fluctuates continually, small pipe especially.

(Mr. MANSFIELD:)

98. What is the customary service pipe furnished to residences in a city the size of Peoria?

A. Do you mean the length of the service?

99. No, sir, the diameter?

Ans. 1¼ inches.

100. As a gas expert, is it customary in the management of a gas plant to lay service pipes from the curb to the house, stores or residences free of charge to the occupant or owner of the store- or residences?

A. It is a very narrow and short sighted concern that undertakes to charge at this time for the running of service pipes; that question was partially answered in a previous answer wherein I stated
366 that the progressive gas man of the present day did everything possible to secure business; it is a fact that many owners of property would not run a gas service for their tenant if they thought it was going to cost them anything, nor will the tenant improve the landlord's property by going to the expense of running a service pipe at his own expense, but if he moves into a house and finds gas connection made, he naturally becomes a gas consumer and while the first cost to the company is an item of expense, it is more than compensated for by reason of the fact that the company secured a regular and steady customer. I now have the weights of the pipe inquired about a short time ago.

101. What was the aggregate weight of the 16 inch, the 12 inch, 10 inch, 8 inch, 6 inch and 4 inch pipe?

A. The 16 inch was 94 93/100 tons; the 12 inch pipe 778–90/100 tons; the 10 inch pipe 90–53/100 tons; the 8 inch pipe 404–58/100 tons; the 6 inch pipe 193 11/100 tons, and the 4 inch pipe 808–52/100 tons.

102. Is this estimate made from the books of the company or is it made from your standard of weights you have before you?

A. It is made from the standard adopted by the American Gas Light Association and adopted by most of the foundries.

(Mr. RITSHER:)

103. What scale do you figure on?

A. 4 inch pipe 20 pounds per foot; 6 inch pipe 30 pounds per foot; 8 inch pipe 40 pounds per foot; 10 inch pipe 52 pounds per foot; 12 inch pipe 75 pounds per foot; and 16 inch pipe 108 pounds per foot.

(Mr. MANSFIELD:)

104. What in your opinion as an expert are the commercial departments that are operated by a modern gas plant with the idea of first increasing the gas consumed and second, of increasing the profits on the gas sold?

A. I don't know just what you refer to in your question.

105. Are any commercial departments run in connection
367 with a gas plant?

A. Oh yes, there is usually connected with the office, besides the usual force of clerks and book-keepers, some one person or persons who attend to the setting and removal of meters, give atten-

tion to complaints of consumers such as stoppages of service pipes, poor burners, leaky fixtures, etc., the sale, renewal and repairs of Welbach lights and introduction of same, the introduction of gas stoves by way of cooking demonstrations and other demonstrations as to what gas ranges or gas appliances of all kinds will do, and can do; and then the works, in a town the size of this, I should say it would pay any company to keep in its employ some woman who is competent as a cook to demonstrate all that can be done with a gas stove and follow up the sale of each stove by giving instructions in its use; this would apply to other appliances as well as gas stoves.

106. In your answer then is it to be understood that there are three departments connected with a modern gas plant for the increasing of the gas consumed and for the increasing of the profits on the gas sold?

A. Not necessarily in the increasing of the business but I should divide up the commercial departments in some such way as this:—the office as one department, the meter and complain- department another, the street main and street service department as another; the soliciting of new business another, and under that head possibly would come the question of demonstrating the use of gas as a fuel.

107. Would you have a gas stove department connected with your office?

Ans. Yes sir.

108. Would you have a Welsbach burner *burner* department connected with your office?

Ans. Yes sir.

109. And would you have a gas fixture department?

368 A. Yes sir, I would make my office as attractive as possible both in the display of gas stoves, gas fixtures and Welsbach lights and I should have them so arranged about the office that people could not come in or go out without seeing them.

110. What commercial department has the Peoria Gas & Electric Co. for the purpose of increasing the gas consumed and for increasing the profit on the gas sold, if any?

A. I have not talked with Mr. Little in regard to that, and do not know how the departments are divided or how the work is distributed.

111. As a gas expert state whether or not you think that a gas stove department, including both heating and cook stoves, a Welsbach department, and a gas fixture department should not be attached to a modern gas plant?

A. I should say it should be attached to the business of a modern gas company.

112. In this connection do you consider it is one of the best means of pushing and enlarging the business of a gas company to have these commercial departments attached to the business of the company?

A. Yes sir, I believe that is the only way as far as I know to increase the business of the company, that and the proper treatment

of consumers, prompt attention to all complaints; I believe in doing everything possible to satisfy the consumer.

113. In your opinion as a gas expert would that increase in the consumption of gas as well as the profit be attained as well by a company that did not have an electric light plant as a part of its business and did not push its Welsbach burner as well as one who did have an electric light branch to its business?

A. Well the two lights occupy an entirely different field;
369 it has settled down pretty nearly to this fact, I believe, that the electric light—I refer now more especially to the incandescent light—is used by people who don't figure so much the household expenses and where decoration is required where gas might be dangerous, where the heat would be objectionable and where the question of convenience enters in. That is to say, where you can by pushing a button or turning a switch, light your incandescent light ahead of you or put it out after you have returned; that is a field in my judgment the incandescent light occupies, while gas on the contrary occupies a field of appealing to a larger number of people because it is, in my judgment, a much cheaper light and much more light is furnished for a smaller amount of money than is the case with the electric light, therefore, I can see no reason why one company dealing in both kinds of light, needs to come in contact with each other in their different departments on that account.

114. Then should any risk be taken into consideration as to the business of the Peoria Gas & Electric Co. on account of electric lighting when they own an electric lighting branch themselves?

A. Not where they are competing with themselves and where the same conditions might prevail as at present, but the advance in electricity has been so rapid and wonderful we are prepared for most any surprise.

115. What do you mean by under the present conditions?

A. You referred to the Peoria Gas & Electric Co. as furnishing both gas and electricity and I referred also to that same condition.

116. Could not the improvements or the right to use the improvements and inventions in electric lighting be obtained by this company as well as by any other company that is in the same business in the United States.

370 A. I know of no reason why it could not.

117. What are the bi-products that are sources of revenue to a modern gas plant?

A. Coke, tar, ammoniacal liquor and a small amount of carbon.

118. Is there any other bi-product known to the commercial world from which a gas company obtains revenue?

A. Well, I have known of gas companies selling what is known as drip water, that is, the water that is pumped out of the drips around the holder and about the town, used for some medicinal purposes; I don't know what it is used for; that is all that occurs to me now.

119. Would that be a bi-product called nap-thaline?
Ans. No, sir.
120. Do you know any such bi-product as that?
A. I know of such a term but it is not a bi-product; I know of gas companies who make quantities of it and would like to sell it, but prefer to keep it in their gas rather than sell it, because nap-thaline is an illuminant of the gas and that product is thrown down or deposited under unfavorable conditions and when that product nap-thaline is deposited there is a certain amount or certain proportion of the illuminants of the gas that are deposited with that and it is the aim and endeavor of every gas engineer to so operate his works as to keep the nap-thaline present in the gas and deliver it to the consumer.
121. Is not more or less of this nap-thaline deposited in every coal gas plant?
Ans. Yes, sir; there is.
122. Has it a commercial value?
A. I presume it has; I have never known of any gas company selling it; there are other ways of manufacturing nap-thaline except about gas works.
371 123. The Peoria Gas & Electric Co.'s plant in the city of Peoria consists of a stack of 7 benches, each containing 9 retorts, and each bench containing also a regenerative furnace of the full depth type for heating retorts, the gas after being driven off the coal passes over into a preliminary air condenser and from this condenser it passes through a tar extractor of the type known as P. & A., it then passes through two air coolers, then through two water coolers, then through a washer and then through two scrubbers after leaving the scrubbers the gas passes through two purifyers containing oxide of iron, for the purpose of removing the impurities and for the purpose of removing the impurities known as sulphurated hydrogen and carbonic acid; after leaving the purifyers the manufacturer of the gas is complete and it then passes through a station meter where it is registered as to volume and forced into a storage holder from which it is distributed to the proper mains in the streets. From this description of the plant of the Peoria Gas & Electric Co. in the city of Peoria would you consider it a modern plant and one of the best equipped plants that could be constructed on the first day of May, 1900?
A. Yes sir, I certainly would.
124. What was the capacity of the ammonia concentrator connected with the Peoria Gas & Electric Co.'s plant?
A. It was ample for a works manufacturing half a million cubic feet of gas per day.
125. What is the size of it?
A. I have not the dimensions of that in my memorandum, but I recollect now that the concentrator was about 8 feet high and 3½ or 4 feet in diameter.
126. Supposing the plant was as described in interrogatory 123

372 and to that plant so described there was added an ammonia concentrator of a capacity to take care of the ammonia obtained from the manufacture of 165,000 cubic feet of gas per day, would you then consider this gas plant to be a modern gas plant and so constructed as to reduce the cost of the manufacture of gas to a minimum, taking into consideration the assumption that the gas plant as described does manufacture 500,000 cubic feet of gas per day, and eliminating your idea of the fact that there was an ammonia concentrator of a capacity sufficient to take care of 500,000 cubic feet of gas per day?

A. If I understand your question, you want to know if the present works were manufacturing about 165,000 cubic feet per day would the present ammonia apparatus be sufficient?

127. Would an ammonia apparatus capable of taking care of the condensation of 165,000 cubic feet of gas per day, that is, take care of the ammonia condensed from the manufacture of 165,000 cubic feet of gas per day attached to this plant would that be a modern plant?

A. If the works were making but 165,000 cubic feet of gas per day and never expected to make any more than that, I would not consider it good policy to put in an ammonia apparatus at all, for I do not think it would pay; its apparatus was put in, I suppose anticipating the growth of the business and the necessity of manufacturing more gas and consequently the carbonization of more coal.

128. Supposing the plant of the Peoria Gas & Electric Co. had no ammonia condenser except one which had a capacity of taking care of the ammonia manufactured from 165,000 cubic feet of gas per day, would you then consider the Peoria Gas & Electric Co.'s plant a modern plant?

A. It would be considered a modern plant up to the point
373 of taking care of 165,000 cubic feet of gas per day, but it would not be a modern plant anticipating the natural growth and the natural demand that would be made upon a works of this kind and character.

129. Supposing that the Peoria Gas & Electric Co. were manufacturing 500,000 cubic feet of gas per day and that the ammonia concentrator was only capable of taking care of the ammonia obtained from the manufacture of 165,000 cubic feet of gas per day, would you then consider it a modern and well equipped plant?

A. No, sir.

130. Supposing you had a plant consisting of a stack of 7 benches containing 9 retorts each and each bench containing also a regenerative furnace of the full depth type for heating retorts, also a preliminary air condenser, a tar extractor of the type commonly known as P. & A., two air coolers, 2 water coolers, a washer, 2 scrubbers, 2 purifyers containing oxide of iron, a station meter, a storage holder, the bench capacity being 500,000 to 600,000 cubic feet of gas per day of 24 hours, the condensing plant of a working capacity of slightly over 100,000 cubic feet per day, purifying boxes of a capac.

ity of 800,000 to a million cubic feet per day, a storage holder of the capacity of 300,000 cubic feet per day, and an ammonia concentrating apparatus added of a sufficient capacity to extract all the ammonia from the gas made, also a tar still attached for the purpose of reducing the tar to pitch and extract the several grades of oil from all the tar produced from the manufacture of the gas, also an apparatus for purifying all the nap-thaline produced from the manufacture of the gas, also an apparatus for extracting the sulphurous compounds and preparing them for commercial use, also a thoroughly equipped chemical laboratory attached by which a chemical analysis of the gas could be made daily, would not
374 such a plant, as above described, be in your opinion a more modern and better equipped plant for the purpose of reducing the cost of manufacture of coal gas to a minimum than the plant as described as being constructed and erected upon the property owned by the Peoria Gas & Electric Co. in the city of Peoria?

A. That company has now all these things you referred to except the apparatus for the utilizing, or manufacture as you term it, of nap-thaline and the restoration of the oils from tar and the manufacture of pitch. I hardly think those things would be practical or economical or useful about a gas works of the size of this one. In fact, I think they would be a nuisance and an expense.

131. From your expert knowledge of the manufacture of gas, state at what period in the process of the manufacture of coal gas nap-thaline is extracted from the gas manufactured?

Objected to as assuming that nap-thaline is a bi-product?

A. Nap-thaline is not extracted anywhere; that is a wrong term to use.

132. Is it precipitated—would that suit you better?

A. Well, I am not to be suited. Nap-thaline is always present in the gas, as I stated before the desire is to keep the nap-thaline in the gas until it is distributed to the consumer for the reason that it constitutes the illuminant of the gas——

Defendant's counsel objects to the foregoing answer as not responsive and moves the court to exclude it.

The WITNESS: I am coming up to your question now. Nap-thaline is deposited anywhere between the hydraulic main and the consumer's meter, consequently it can be extracted between either of those points; the deposition of nap-thaline at any point about the works, mains or services, or in the consumer's meter is due to some sudden change in the gas—a shock by reason of a sudden change in temperature or jar of the gas, such as a main crossing under-
375 neath a railroad track or crossing the bed of a stream or river, or where the mains may be suddenly reduced in size, causing friction in the delivery of the gas—all those things tend to the deposition of the gas, whereas if they did not exist the gas might be delivered to the consumer without any deposition of nap-thaline;

nap-thaline is the most serious trouble gas men have to contend with and it is liable to make its appearance anywhere between the hydraulic main and consumers' meters; I have even seen it in the fixtures in houses.

133. If that be true would it not be the part of wisdom in the manufacture of gas to have that nap-thaline deposited if possible at a place certain in or about the manufacturing plant?

A. No sir, you could not arrange any place certain and if you could, if you robbed the gas of that ingredient, nap-thaline, it would be like taking cream from milk, you would be skimming your milk and taking off the cream, and you would have to enrich it by going to an additional expense in the shape of some enricher; nap-thaline is the cheapest enricher I know anything about.

134. In the liquor of ammonia and the tar, don't you find present the bi-product called nap-thaline?

A. It is carried along with the tar, yes sir, to a great extent.

135. Is there any in the liquor of ammonia that comes from the manufacture of the gas?

A. Very little or none.

136. Is it not a fact that some gas companies in the United States extract the nap-thaline from the liquor of ammonia and the tar water?

A. I know of none that do it.

136. What is the nap-thaline, which is obtained from the
376 manufacture of coal gas, used for in the commercial world?

A. I have seen it used to intensify the illuminating value of gas in the shape of a patent gas burner known to the trade as a hydrocarbon burner, and above the burner is a reservoir in which this nap-thaline in its solid condition is placed and the heat from the burner, playing against the bottom of this vessel, volatilizes the nap-thaline and restores it to the gas flame in the manner I have stated before, the gas having been robbed of it, it is simply restored to the gas in another way. It is also used as a disinfectant and used as a preventative against moths, buffalo bugs and things of that kind and probably a number of other things to which it is applied, but they don't occur to me at this time.

138. As a gas expert state what economical reaction occurs in the process of the purification of gas by means of oxide of iron?

A. The unpurified gas coming in contact with the oxide of iron creates heat; this heat puts the oxide of iron in that condition where it has an affinity or ability to attract and hold sulphurous compounds—sulphur impurities; that is the particular impurities which oxide of iron has any affinity for.

139. Is there any commercial use for the compounds of sulphur thus obtained?

Ans. Yes sir.

140. Is that an item?

A. That is considerable of an item, but that work is done by chemical companies who buy up this oxide of iron after it has be-

come foul and spent, that is, after it has taken to itself all the sulphurous compounds it can hold and has ceased to become purifying material; it is then taken by chemical companies and by some process of their own these sulphurous compounds are removed.

141. Could not these sulphurous compounds be removed by
377 means of a chemical laboratory located upon the ground of the gas company?

A. No sir, not properly.

142. Do all gas companies sell this oxide of iron when it becomes completely saturated with these sulphurous compounds?

A. In general only a very few, only the larger companies in the larger cities where they are close to some works who handle that sort of material and where it is an object to them to reduce their cost of purification to the minimum by receiving in return for the old oxide of iron new oxide of iron that will perform the same work that the old originally did, the old oxide, charged with sulphurous compounds being valuable to the chemical works whereas the new oxide is valuable to the gas company.

143. From your knowledge as a gas expert what, in your opinion, would be the cost of coal gas in the holder of a company per thousand cubic feet to a gas company whose gas factory or works consist of the following apparatus: A stack of 7 benches which contain 9 retorts each, and each bench contains also a regulation furnace of the full depth type for heating retorts, the gas then passing over the coal into a preliminary condenser, from this condenser passing into a tar extractor of the type commonly known as P. & A., the gas then passing through two air coolers, through two water coolers, then through washers, then through 2 scrubbers, from whence it passes through purifyers containing oxide of iron and afterwards passes into the holder. In answering this question take into consideration also the fact that the bi-products of tar, ammonia and coke are extracted and sold, the tar for 5 cents a gallon, the ammonia for 8 cents a pound and the coke at an average price of $3.25 per ton; also take into consideration that 22% of the coke made is used in heating furnaces and that gas coal called Youghiogheny coal costs $2.65 a ton f. o. b.; also take into consideration all the
expenses of the company in the manufacture of the gas up to
378 the holder and all the revenues of such company obtained from the sale of the residuals, coke, tar and ammonia, basing your estimate on a daily make of 165,000 cubic feet per day?

A. About 45 cents.

144. What would be the cost of gas in the holder under the same conditions where the daily make was 500,000 cubic feet of gas per day?

Ans. About 39 cents.

145. Suppose that a gas plant of the kind and character described in the previous interrogatory manufactured 3,926,000 cubic feet of gas in a month and that the cost of the gas coal was $1,033.96, the cost of bench fuel $242.28, the cost of boiler fuel, $75.93, the cost of

manufacturing supplies $12.35, the cost of purification supplies $47.13, the cost of enrichers $5.23, the cost of repairs to the retorts $42.92, the cost of the manufacturing labor $700.30, the cost of the purification labor $5.25, the cost of the labor on repairs $28.15, the valve of the coke in the store room $1140.52, the value of the tar $237.55, and the value of the ammonia $136.55. What was the net cost of the gas per thousand cubic feet in the holder of that company?

Objected to as now cross-examination and calling for a computation which anyone can make as well as the witness.

The MASTER: I think that is true but the witness can answer it if he can subject to the objection.

A. Have you the total there of that?

146. The total cost of material was $1459.80?

A. What is the rest of it?

147. Total labor $733.70.

Ans. How much repairs?

148. $42.92?

Ans. Expenses of insurance?

149. No, no insurance.

A. Do these three items you have given me cover all the 379 items you have read?

150. Yes, I think so.

A. So the total expense is $2236.42. Is there any credit there for residuals?

151. The total value of residuals $1534.66?

A. That would leave the net cost then $701.66. If you have given me all the items it would be 17 88/100 cents per thousand cubic feet. That answers your question so far as the information you have given me is concerned.

152. As an expert is not that a fair average price of the cost of gas in the holder to a company in a town where the manufacture of gas amounts to about five million cubic feet of gas per month?

A. No sir, the item of taxes alone would come within four or five cents of that amount.

153. This in the holder, we are not taking in the cost of distribution.

A. Taxes do not apply to anything very much outside of the works.

154. What are the taxes if you know, of the Peoria Gas & Electric Co.'s plant in the city of Peoria?

A. I have looked at statistics a good deal, I think, however, I had not Peoria in my mind, but these western cities and towns don't average very far from 9 cents to 11 cents per thousand feet of gas made.

155. Supposing the amount of taxes paid by the complainant company in the city of Peoria was $5500. what would be the addi-

tional cost per thousand cubic feet of gas on account of those taxes, assuming the manufacture of five million cubic feet per month?

A. 9-16/100 cents.

380 156. Basing it upon a manufacture of five million cubic feet a month?

A. Yes, that would be sixty million cubic feet a year.

157. What would be the cost in the holder to a company who owned a plant similar to that just described per thousand cubic feet, where the total amount of gas manufactured equalled 500,000 cubic feet per day?

A. I have already answered a similar question—39 cents.

158. In the manufacture of twelve million feet of coal gas per month, what would be the expense to a company in a city of the size of Peoria, or about the size of Peoria, to manufacture that amount of coal gas, and what in your opinion would be the cost of the gas per thousand cubic feet at the point of consumption?

A. I suppose in a city similarly located to Peoria?

159. Yes sir.

A. Is that exclusive of residuals?

160. Inclusive?

Ans. About 66 cents.

161. What would you calculate the fixed charges there to be if there are any?

A. I have not taken into consideration any fixed charges such as interest on bonds or anything of that kind.

161. What would be the general expense which you consider in making that up?

A. Do you mean office expenses?

162. Yes sir.

Ans. About 7 cents.

163. What would be the expense for coal gas labor?

A. About 5 cents.

164. What would be the expense for coal gas supplies?

A. What do you mean by supplies? How far would that extend—everything exclusive of coal?

381 165. Whatever you took into consideration when you made your computation?

A. What we ordinarily consider as supplies about 1½ cents.

166. What do those supplies you consider at 1½ cents consist of?

A. I should say of lubricating oils, waste, gasoline or nap-thia which might be used about the works for injecting into the mains or purifyers for the breaking up or removal of nap-thaline, brooms and sundry small articles, stationary and things of that kind.

167. What would be the labor of distribution attached?

A. About 24 cents.

168. What would be the expense of distribution as distinguished from the labor of distribution?

A. I included all expense and labor in my estimate.

169. What would be the net revenue from coke obtained fr the manufacture of that amount of gas?

Mr. RITSHER: Do you assume that a certain amount of coke used for fuel?

Mr. MANSFIELD: I suppose he assumes that a certain portion it is used for fuel.

A. $760.50.

170. What would be the value of the tar obtained from the ma ufacture of coal gas at 5 cents per gallon?

A. $140.40.

171. What would be the value of the ammonia at 8 cents a poun

A. $149.76.

172. As a gas expert do you not know that in a city of about t size of Peoria the gas manufactured in a plant similar to the pla installed by the Peoria Gas & Electric Co. where it manufactur 3,757,400 cubic feet in a month, can be placed in the hold
382 at an average net costs of 22 cents and 5 mills per thousa cubic feet excluding any fixed charges such as taxes in yo computation?

Objected to if the language "where they manufacture" is intend as anything except an assumption.

A. In my judgment it cannot be done.

173. Assuming that the Peoria Gas & Electric Co. manufactu in one month 4,117,400 cubic feet of gas, is it not a fact that it cou put that gas in its holder at a net cost of 21 cents and 4 mills pl per thousand cubic feet?

A. There might be some peculiar conditions by which that cou be done in one single month—there might be some favorable ci cumstances or conditions but month in and month out in my jud ment it could not be done.

174. Supposing the Peoria Gas & Electric Co. in August 19 manufactured 3,926,000 cubic feet of gas, could it not have put th gas in its holder at a net cost of 16 78/100 cents per thousand cub feet?

Ans. No sir.

176. Is there any peculiar conditions under which that could done?

Ans. None that I know of.

177. As a gas expert, is there any air used in the purificati process of the manufacture of gas?

A. Yes sir, it is used in a great many works for revivifying th oxide.

178. About what percentage of air is used?

A. Not to exceed one per cent.

179. I understood you to say on direct examination that September 4, 1900, the cost of gas at the point of consumption furnished by the Peoria Gas & Electric Company would average

cents at that time taking into consideration the fact that the plant was new and was not operating nicely—is that so?

383 A. No, that figure was established after the first preliminary four months when the works were operating well.

180. You testified to that as being of date September 4, 1900, did you not, four months after the installation of the gas plant?

A. Yes, but I think I qualified my answer by stating it was after the works had gotten into successful operation, the air had been excluded, the benches heated up and the oxide and everything of that kind was in the best working order.

Re-direct interrogatories by Mr. RITSHER:

1. At that time, September 4, 1900, when you fixed the price at 85 cents, how near would the plant be to being in good running order?

A. I think I stated it would require four or five months to get the force organized and all apparatus in the best working condition.

2. Do you assume that at that date it was running smoothly?

A. Yes, sir, but during the first four months it was in a sort of experimental stage or period.

3. In your cross-examination, you fixed the cost price for gas to the consumer and were questioned in regard to various items which went to make it up. You were questioned concerning office expenses, coal gas labor, coal gas supplies, labor of distribution—now what other items would go into that cost—you need not state the exact amount but a general classification of them.

A. There is an item of expense works and other labor employed about the works, as to works, as to mains and services, meters and distribution expenses.

4. You testified on cross-examination to the measurement of certain buildings down at the works—where did you get those measurements?

384 A. I made them with the assistance of one of the young men at the works with a tape line.

5. In that estimate you made as to the cost of gas to the consumer, did you include anything for depreciation or interest on the investment?

Ans. No sir.

Re-cross interrogatories by Mr. MANSFIELD:

1. Where a gas company has its plant insured and where the repairs are made as they are needed, did you take that into consideration when you stated that the depreciation to the plant would be 7 per cent.?

A. Yes, I took that into consideration for the reason when one piece of property becomes worn out or too small, that of necessity is abandoned when new apparatus is substituted.

Adjourned by agreement until December 11, 1901 at 10 o'cloc a. m. to meet at such place as may be designated subject to the ca of the special commissioner.

385 Masonic Temple building, # 520 Hennepin avenue.

MINNEAPOLIS, MINN., *December* 11, 1901—10 a. m.

Parties met by agreement.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T Irwin, Mr. E. C. Ritcher, Mr. W. T. Abbott, appearing for complain ant. Mr. Henry Mansfield, appearing for defendant.

HARVEY W. BROWN, called on behalf of the complainant, bein first duly sworn, deposes and saith :—

Direct interrogatories by Mr. IRWIN:

1. State your name, age and residence?

A. Harvey W. Brown ; 61 ; Minneapolis, Minn.

2. What business are you engaged in?

A. I am president of the Minneapolis Gas Light Company, that is my chief business.

3. Are you familiar with the manufacture of gas and the differen processes?

Ans. I am.

4. How long have you been connected with the manufacture and sale of gas and in what capacity? Please answer in detail.

A. I went into the gas business in 1860; I have been in it con tinuously ever since that time and have done everything in the gas business from shoveling coal up to the position I now hold ; there is no position in a gas company, either in its manufacturing depart ment, its commercial department, its executive department, or its construction department that I have not filled.

5. What are the different processes in use throughout the United States for the manufacture of gas to be sold through a general dis tributing system laid in the streets of a city for illuminating and fuel purposes?

A. The two principal processes are what is known as the
386 coal gas process, or works, and the other is what is known as the water gas or oil gas process as some people designate it.

6. Please describe in a general way the nature of the water gas process you have mentioned?

Objected to as immaterial and incompetent.

A. Water gas is manufactured, as the name indicates, from water principally ; the gas consists chiefly of hydrogen or what is known as the blue gasses ; the water is converted into steam and it is caused to pass through a large body, say a bed of six or eight feet in depth, of incandescent coal or coke—I do not mean by that to say soft coal,

but either hard coal or coke, any substance as near pure carbon as possible. I wish to say in this description that I am trying to avoid all technical phrases that are not generally known and will try to make it as plain as possible so anybody can understand it. The process of the steam passing through the incandescent, or red hot coke, serves to oxidize the oxygen in the water, water being composed largely of oxygen and hydrogen, the oxygen combines with the incandescent coal or coke and liberates the hydrogen or blue gasses in the water and as they pass up from the body of coal, oil is injected either in a spray or in a condition where it will easily vaporize, the vapors mingle or blend with the hot blue gasses from the water and they pass together into the super-heater; those super-heaters contain about 2700 cubic feet of space to every square foot of grate surface as a rule; sometimes those super-heaters are 20 and 30 feet high and even higher than that; the brick in those super-heaters are laid crosswise, being one tier this way and one crosswise, leaving tiers or spaces which in the aggregate capacity of the super-heater is equal to the outlet pipe that goes from the super-heater; this super-heater is also red hot; the two gasses, the vapors of
387 petroleum and the blue gasses generate in the water, passing together through the super-heater, going through the chemical change of breaking up all the particles, that is to say, each one of these minute particles is broken up so fine by the heat they lose their specific gravity and will not again condense into a liquid; from this super-heater the gas passes into what is called wash-boxes which serve the purpose of taking out the tar particles in the gas as nearly as possible; from the wash-boxes it goes into condensers and scrubbers and then proceeds to what is termed a relief holder. The object of this relief holder is, the gas generates so rapidly it is impossible to treat it in purification and cooling sufficiently rapid in generation without having an exceptionally large plant. From the relief holder the gas is supposed to become quiescent and if you could examine the inside of a relief holder when quiescent and quiet it would resemble the dew falling from the heavens at night, the little fine infinitesimal particles being contained on the surface of the water in the holder during the process of cooling; from the relief holder it is taken by the exhausters; it is then put through what is known as the scrubbing or finishing process—through the scrubbers or washers that have been erected for that purpose; from the washers it passes through purifyers where the sulphur compounds of carbonic acid and the objectionable constituents of the gas are removed; from the purifyers it passes through the station meter where it is registered or measured; thence on to the distributing holder and after reaching the distributing holder it is treated precisely the same as any other gas as it is carried to the consumer Such in brief is the water gas process.

7. Please describe in detail the modern method and apparatus for the manufacture of coal gas as now in general use?

388 A. You start from what is known as the benches te
cally of retorts; the modern bench of today is a benc
what is known as 9's, otherwise 9 retor-s in one oven. They
practically a two story affair, that is to say, the generators u
neath, or the heating furnaces underneath, in the cellar or
ment, or story by itself; a floor is built over to a point where
convenient to charge the 9's and draw them; you start from a b
at the bottom and put in, what is called regenerative or recu
tive furnaces, both mean the same thing, a large mass of fuel,
in an incandescent condition, that is, a slow burning conditi
condition evolving or generating the gas from the fuel; that is
is known technically as the primary air process; that is ca
through ports until it becomes necessary to complete combustio
adding more atmosphere to it which is done by what is know
the secondary ports and the combustion is completed in the
bustion chamber; the combustion chamber immediately under
retorts or the retorts are heated up to a point say of about 2800
grees of heat—what might be technically known as a lemon he
the coal is charged into these retorts in various quantities accor
to the necessity of the company and from there the gas from the
is eliminated by the heat; the charges usually occupy about 4 h
to burn them off, although it may take 4, 5 or 6 hours accordi
the necessity or requirement of the company; after the charg
burned off the coke is drawn and goes into the cellar where
taken care of by the men placed there for the purpose and
benches are again refilled and so it is repeated. The gas
leaving the retorts goes up the ascension pipes and goes into w
is known as the hydraulic main; that is a main that is sealed
sufficient water so the gas has to pass through water before it
escape out of the pipe into the hydraulic main, the pur
389 being to have a perpetual seal against any back press
which may come when the retort lids are open and thus cr
an explosion by the fact of gas escaping back to the retorts; f
the hydraulic main it is taken up by an exhauster immediately
the hydraulic main, that is to say an exhauster is working on it
the time so as to neutralize the pressure upon it, the aim being
to have any pressure or vacuum; the exhauster pushes the
through what is known as condensers; these condensers usually
a multibular affair, that is to say, they are composed of as ma
tubes as can be put within a given shell, whatever the size of
shell may be, in some of the condensers the tubes are filled w
water, in others the space outside of the tubes is filled with wat
whatever it may be, the spaces are filled with water and the
passes through the other space, the object being to reduce the t
perature of the gas—cool it; from the condensers it goes into
washing scrubbers and these scrubbers are repeated successively
various numbers according to the ideas of the manufacturer of w
the necessity of scrubbing is; from the scrubbers it is very of
taken up by what is called a P. & A.—technically known by

men as P. & A., but it is called Pelouze-Adoriun tar separator; the object of this is to strain or take out all the small particles of tar that may be left in the gas that has not already been condensed out of it; this P. & A. separator consists of very fine minute sieves which are exposed to the gas so that the ascent of each one of these sieves when all added together equals the capacity of the main; the theory is that the tar particles are in little globules or round *sh*peres like little toy pellets and in passing through these fine sieves they press against them and break them from their round or spherical shape and they go down mingled together and pass off without being carried through with the gas;
390 after the gas passes the series of condensers and scrubbers it next goes to the purif*y*ers; purification takes place in the usual way with either lime or oxide as the case may be most advantageous to the company, and from there it goes through the station meter, is registered and measured, thence from the station meter into the holder and thence taken up and passes into the street. Such in brief are the outlines of the two processes. There are other processes used in a very small way in isolated places. For instance, what is known as the Wood process, in some of the remote, small towns in the south where they are close to the pitch pine fields, where they can get pitch pine knots but not coal, and they use pitch pine for the purpose; but I presume it don't aggregate one tenth of one per cent. of the production in the United States. This process and others are hardly worth speaking of. Then, of course, we pass into the field of what may be called smaller operations. For instance, you can take ascet*a*line gas, isolated plants, gasoline gas, as they call it, or carbureted air process, but none of them are in use serving a community; they are only isolated plants.

8. Will you give a brief history of the origin and development of the manufacture and sale of gas generally covering both the illuminating and fuel part of it?

A. The discovery of gas was made in England about 100 years ago and came to this country, I should say roughly off hand without refere*n*ce to records, about 70 years ago; it was first introduced in New York and Philadelphia and from there it spread over the entire continent of America, in fact, all over the world until today, I think, there are about 1100 gas companies in the United States. I don't think you want to go into the particulars do you?

9. No sir, I do not care to do into the different changes
391 of process of all the different kinds.

A. So far as the manufacture and production of what is technically known as water gas is concerned, its first inception—

Interrupted.

Mr. Mansfield: I object to the statement in regard to water gas as irrelevant and immaterial.

The Master. It is merely preliminary, as I understand it, for the purpose of qualifying the witness as an expert.

Mr. IRWIN: It is simply to show the technical knowledge of the witness in order to qualify him as an expert.

The WITNESS: Water gas originated about the time I went into the business 40 years ago; it was the first inception of the use of liquid hydrocarbon in the manufacture of gas instead of solid hydrocarbon. In other words, the liquid hydrocarbon is known as any substance particularly petroleum and the solid hydrocarbon is coal of any kind. It was first introduced by myself and my associates in various works throughout the country, but we felt the lack and need of hydrogen as a dilutent; experiments were made along that line for about 7 or 8 years until finally the scheme of extracting the hydrogen and blue gas from water was taken up; then the old process, known as the Gale & Ram process I have spoken of, was abandoned for the water gas process, or united with it; since that time it has been introduced in various quantities until I presume today one half of the gas in the United States is made by the water gas process; I have already described that process unless you wish me to enumerate the works using water gas. I have stated enough to cover the idea.

10. Yes, I think you have covered that matter sufficiently for the present. Please give a brief history of the use of gas for fuel purposes.

392 A. Gas was introduced for fuel purposes about 15 or 16 years ago; it was found by calculation that a given quantity of food could be cooked using gas for fuel much to the advantage of the food cooked and the uniform heat that could be obtained and also quite as economically as it could be cooked by any other fuel, therefore, gas stoves were originated and taken up by the different gas companies and it has been vigorously pushed from that day to this for all possible applications where it could be used for fuel with economy, and the result of it is that the companies throughout the country that have advocated and advanced it are to-day enjoying the advantages of it to the extent at least of 50 per cent. of their consumption; I know my company is selling more than one half of its output for fuel.

11. Please describe the changes which have taken place in the last 25 or 30 years in the type of benches, number of retorts, setting furnaces and condensing apparatus, the change in the type of purifyers and purifying materials and the changes and advance in the recovery of bi-products and state in general terms the reasons of such changes?

A. Probably 30 years ago—I should say roughly—a clay retort was practically unknown, the retorts in use at that time being cast iron; the gas was generated under what was known at that time as a condition of low distillation or low heat and the yield from the cast iron retorts using our best gas coal would very rarely equal 4 feet per pound and the benches at that time run from a bench of one to two and three; they had no regenerative furnaces whatever and

it would consume nearly all the coke that the benches produced to heat the retorts, that is to say, they had very little coke left for sale as a residual, the low distillation, or lack of capacity in the iron retort, or low yield of gas, consumed or used
393 up nearly all of the bi-product known as coke; at that time Adam Webber, I think, of New York, conceived the idea of building a clay retort and clay retorts were substituted in these benches instead of iron; it was found that with the clay retorts you could carry a higher heat in a well regulated bench at that time it would increase the yield from the coal perhaps from 15 to 20 per cent., which was quite a saving; the furnaces, however, were the same, they were the old furnace set in the retort on a level with the floor you were working on and you would simply open the door, shove it full and let it burn up to heat the benches; subsequently I believe a man by the name of Klone, a German in Munich, I think conceived and introduced what was known as a regenerative furnace or regenerative bench which I have heretofore described; those benches came over to this country about 16 years ago and we were the first to introduce them; they were brought here by a man named Bredell; we contracted with him to set us up 8 benches of 9's and we have used them constantly since until last year and they are now being destroyed in order to be rebuilt; of course, with the introduction of the regenerative bench of 9's, a man who had before that time been equal to charge and draw what would be about 7000 or 8000 feet of gas capacity in a day, would work up to a point where we could get 20,000 out of him, and it made a great saving of labor; the size of retorts were also increased, they used to be 10 x 12 and 8 or 9 feet long, now we have them up to 14 x 28 and 9 feet long; a charge of coal that used to go into the iron retorts if it reached 200 pounds was regarded as excessive, now a charge of coal amounting to 450 pounds in a retort is not regarded as excessive; the improvement has been a general extension, a general increase of the capacity, a general increase in the productiveness of the benches and economy in the saving of coke; the genera-
394 tive bench of 9's is unquestionably today the greatest advance that has ever been made in the manufacture of coal gas and they are in almost universal use wherever the requirements are large enough to warrant putting one of them in.

12. Have those changes increased the saving of bi-products?

A. Of coke, yes sir.

13. Have they increased the production or saving of any of the other bi-products?

A. The change of itself necessarily, no, that is, of the bench, but the development of the country, the introduction of ammonia for the manufacture of ice, for the cooling of breweries, and its various introductions for other purposes has made a demand for ammonia which has caused the gas companies to save their product known as ammoni-cal liquor; that has been caused by the demand for the article itself and not by the process of regenerative benches. I wish

to say this in explanation. Ammonia is an artificial compound you throw coal into a red hot retort and the coal being filled wit little fine infinitesimal air sells the moment it commences to heat u the air is driven off, the oxygen of the air is burnt up liberating th nitrogen, the nitrogen combines with the hydrogen and produce ammonia; so it don't make any difference in a sealed tight vesse whatever the process is where air is contained in the article you ar using and hydrogen is one of the resulting compounds, the two wi combine and make ammonia. I can make it artificially anywhe outside of gas works as well as in.

14. What changes have taken place, during your experience i the gas business, in the manner of purifying and purifying materia in the manufacture of gas?

A. Do you mean since the introduction of gas or during my ow experience?

395 15. During your knowledge of the gas business?

A. When the London works started they did not purify a all, so I was informed, and the sulphuretted compounds they used t shoot off into that end of the town and the result was it stunk every body out and their nicely gilded rooms and polished plated war and all those things turned black at once; Parliament took it up commenced looking into the matter and found out it was caused b the filthy compound thrown into the rooms by the combustion o gas, and they enacted an act which has been followed as the stand ard throughout the world from that time with reference to th purity of the article, stating that there should not be to exceed s many grains of sulphur to the hundred feet, etc. 30 years ago an before that lime was universally used; in lime either manufacture from oyster shells where they are convenient or any lime containin over 85 per cent. of pure lime—you have plenty of it that don't con tain 50 per cent. of lime, the balance being clay, mud or differen soils, but the lime that contains 85 per cent. and more pure lim was slacked, the purifyers were op-ned and the lime put in on trays it usually was so slack that it was rolled up into little roun! ball about the size of a marble; these were put on the different trays i the purifyers and four boxes were connected in circuit, three o which were in use, one being known as the idle box to be turned o when required; the gas was driven through these boxes, made t pass through the lime, the lime would take up the carbonic acid and sulphuretted hydrogen, a good deal of the free ammonia and the solid sulphur compound; after passing the third box it was supposed to be free of these impurities; this was established by testing the second box and when the second box would show foul the fourth box was turned on and the second box became

396 the first box, the third box the second and so on rotating around and around; today what is known as the oxide process, the oxide of iron or sulphide of iron, as you like, is uni versally used; in the use of oxide you can use a great deal deeper box, perhaps twice as deep as you could in the old lime process be-

cause you are not liable to the back pressure by coking to such an extent; it enables you to use less boxes than you used before they connected them; now they fill, for instance, what is known as the Choller process, only using one box; that, however, is comparatively new, not very well tried yet, and we cannot pass judgment on it, but it is regarded as perfectly safe, if properly constructed boxes are made, to use two boxes with the oxide of iron; the oxide of iron does the same thing exactly that the lime did. Now the chemical changes are practically the same as with the lime, all impurities being removed; of course, the gas passing into a box containing gas, carbonic acid, sulphuretted hydrogen, ammonia and what are known as the solid sulphur compounds, the first thing to be eliminated and taken off, that is, the first thing that the material will combine with the quickest is the ammonia compound, that with the iron or oxide generates the heat; the moment you generate heat the carbonic acid commences to go to the material, after the material becomes charged with the carbonic acid and ammonia to a point when it is full of it, the acid will remove itself and the second box takes up its satchel and walks on, then the sulphur compounds will commence to nest in with the rest of it and so it goes on one after the other it will combine with first and when it gets loaded or charged to a certain extent with one it has the greatest affinity with, it goes to the other and the other becomes absorbed and the next goes on and deposits itself again at the point where the conditions are such it will unite with it to the greatest advantage and ease.

397 For instance, ammonia will immediately leave any compound and unite itself with water if you bring it in contact with water; take weak ammonia, three or four ounce liquor, and it will leave water to combine with its own again. These chemical changes are wonderful when you commence to study them. For instance to show you the different elements and the dangers of them, you take nitrate of glycerine composed of one fourth pure glycerine—the glycerine is perfectly harmless, you can drink it or use it, it is simply a sweet substance, then take nitric acid for the other three parts of it—it of itself is perfectly harmless, you can do anything with it and it don't disturb anybody, but you put them together in the proportion of three of one and one of the other and you have nitro-glycerine, and you know what that will do. Now to go into the realm of gasses, take pure hydrogen and nitrogen gas, the hydrogen is perfectly harmless, almost odorless, perfectly colorless, but you put the two in two pipes, turn on the cock, and let them come together and they will go off like a pistol; they fight immediately, yet they are both part and parcel of the same original element; it is just so with the vagaries of the purification of gasses; in certain proportions they will unite perfectly with material, the material becomes charged to a certain extent with this compound and then it has an affinity for compounds it would not touch before and it immediately goes to, absorbs and takes it up, and when it has taken up a certain quantity of it, partially loaded itself with it, these

other elements taken up first get up and leave and go somewhe
else. It has been quite an exhaustive study with me as a matter
curiosity.

16. With what different gas plants are you familiar and what di
ferent gas plants have you examined during your experience i
the gas business, and in naming these plants will you plea
398 state whether they are coal or water gas plants as nearly
you can recollect.

Objected to as incompetent, immaterial, irrelevant.

A. Ten years ago I don't think there was a gas works in th
United States I had not visited in person—interru-ed.

The MASTER:

17. What was the number in operation at that time or approx
mately the number?

A. Perhaps in the neighborhood of 1000. I will say for the fir
13 years of my connection with the gas business I was constantly o
the move almost; we were introducing a process and, of course,
brought us in communication and connection with a very larg
number of works, it was constant examination of works, sonstan
advice as to what they ought to do or what they thought the
ought to do, sometimes in a scientific way, sometimes in a constru
tion way and sometimes in a business way, and therefore my bus
ness led me to the examination of a very large number of plants;
have been connected with the alterations of the Citizens' gas work
in Brooklyn, N. Y.; I also was associated and connected with th
construction of the Mutual gas works of New York.

(Mr. IRWIN:)

18. State as you go along whether they were coal or water ga
plants.

A. They were all coal gas plants at that time. I was connecte
and associated with the formation of that line of companies, nearly
all of them, in the United States known as Mutual gas light com
panies. For instance, the Mutual of Buffalo; I was also one of th
originators and connected with the erection of the Mutual ga
works in Detroit, Mich.; I also spent nearly one year in overhaul
ing and reconstructing the Memphis gas works at Memphis, Tenn.
I was called in to consult with Mr. Forstall and Mr. McCullough
who were then the general superintendent and chief enginee
399 of the New Orleans Gas Company at New Orleans; I also wa
one of the promoters of the opposition company in San Fran
cisco, Calif., known as the Metropolitan works; I have been called
in consultation with the president of the San Francisco Gas Ligh
Company repeatedly; I have also acted in an advisory capacity with
Charles H. Simpkins of the Los Angeles gas works of Los Angeles
I have also visited nearly all important gas works on the continent
and in England, coal gas works among the rest at London, at Paris

the gas works in Rome, in Vienna, in Berlin and unquestionably the best gas works in the world at Amsterdam, Holland. I state these things not from an egotistical standpoint but simply to answer the question in a general way.

19. Are you familiar with the cost in the open market during the years 1899 and 1900, of the various items of machinery, apparatus, material and equipment entering into the construction of a coal gas plant.

A. Yes sir, I am, that is to say, I would not attempt to tell you the cost, for instance, of an iron wheel barrow for I do not charge my memory with such things as that, but in a general way I am, that is, I would not be bound down to the fraction of a six-pence but in a general way I am.

20. How recently have you reconstructed or built any gas plant?

A. The Minneapolis Gas Company has for the last three years been going through a period of reconstruction.

21. And you have been president of that company during that period?

A. I have been president of the company for 16 years past.

22. I will now call your attention to the plat marked Exhibit "1" in evidence in this case which purports to be a plan of the gas plant of the Peoria Gas & Electric Co. at Peoria, Ill., and ask
400 you to examine it and then state whether or not it represents a proper plan for a modern up-to-date coal gas plant in your judgment?

A. I should say it was very complete for its capacity.

23. Are you familiar with the general location, size, improvements and topography of the city of Peoria, Ill.?

A. I visited the old Peoria works, I should judge about 20 years ago; I am not familiar except with what I saw there. In other words, I am familiar to this extent; I know there is a river there, and that Peoria is principally on one side of the river; I know that after you go back a little ways from the river it slopes up, sort of a bench or higher land; I have a distinct recollection of the old hotel I staid in and that is about all.

24. In your examination as a witness in this case, you will please assume that on September 1st, 1900, the manufacturing plant of the Peoria Gas and Electric Company in the city of Peoria, Illinois, consisting of the following buildings, machinery, apparatus and equipment, to wit:

Retort house.

107 ft. 4" x 42 ft. 2"—brick building with gable roof. Walls 32 feet above grade, 18" thick, for 12 feet and 12" balance of height, with 16" pilaster, spaced 13 feet apart.

Ludowici tile roof, built onto steel frame work supported by seven steel trusses. 30 ft. clere story entire length of building.

Foundations 6 feet below grade and laid on footing of concrete 12" deep by 2 feet 9" wide.

Main floor laid with 9″ x 9″ x 2½″ tile.

Operating floor build upon nine hollow tile arches sprung from 15″ iron I-beams, one end of beam resting on wall and other end next to benches being carried on iron column. Operating floor covered with 9″ x 9″ x 2½″ tile, except 4 feet on front of the benches, which is covered with cast iron plates.

Retort house contains seven Parker-Russell full depth regenerative benches of nine 16″ x 26″ x 9 feet deep retorts to each bench. Each retort provided with mouth piece with self-sealing lid and connects to hydraulic main through 6″ stand-pipes, and
401 bridge pipes provided with self-sealing lids or covers.

Steel hydraulic main is 2 feet 7½″ deep, by 2 feet 5″ wide, build of boiler plate, and provided with four cast iron cleaning pockets fitted with covers bolted on, for each bench.

Hydraulic main is connected to condenser room with a 16″ cast iron pipe in which is placed a 16″ Western Gas Construction Co. gate valve, at hydraulic main. 16″ pipe is covered with magnesia cement.

A 9″ H. & M. angle thermometer is attached to 16″ pipe at hydraulic main.

Hydraulic main is provided with a 4″ tar take-off pipe and connected to both ends of main through 4″ valves.

4″ tar pipe runs entire length of benches, then drops to below floor and is carried to separator in condenser room.

Hydraulic main is also provided with ammonia take-off, which discharges into a cast iron seal-pot which is connected to 4″ tar pipe.

Benches are drafted through a main flue constructed entire length of benches, and discharging into 90 feet by 48″ steel stack, built upon a brick foundation, 12 feet in diameter at base by 13 feet. Foundation 6 feet deep.

Benches and hydraulic main are supplied with water through a 1¼ inch water pipe, laid under retort house floor. Same pipe also supplies water for quenching hot coke, through five stand-pipes, each stand pipe being provided with a stop-cock set in the ground, and fitted with a curb box brought two feet above floor.

5 and # 6 benches and heating coil in elevator pit are supplied with steam through a one inch pipe brought from condenser room. Heating coil contains 150 feet one inch pipe.

For cleaning stopped stand-pipes, a platform of 2″ planks has been constructed the entire length of hydraulic main, in front of stand pipes. Platform is carried on channel iron, bolted across top of hydraulic main.

A 10″ diameter x 13 ft. 6″ travel, direct acting elevator with 6 ft. 6″ x 6 ft. 6″ platform, is provided to elevate coal and coke to the operating floor. Elevator is connected to elevator pump and surge tank in boiler room, with one 5″ and one 4″ pipe, laid underneath boiler room floor.

A 1″ gas pipe is run along the wall entire length of building on each floor, from which eight gas jets on each floor are taken.

Boiler house.

38 feet 5″ x 65 feet brick, with gable roof. Walls 20 feet high, 18″ thick. Roof covered with Ludowici tile built onto steel frames supported by one steel truss. Foundation 6 feet deep, on brick footing 2 feet wide. Floor paved with paving brick.

Pump pit 8 feet x 10 feet x 8 feet deep, 12″ brick walls, wooden stairway and wooden hand-rail.

402 Boiler house contains: two 66″ x 18 feet tubular steel boilers with 36″ x 40″ domes, set in independent brick settings; connected together by one 6″ steam header, from which is taken one 4″ pipe to supply heating apparatus, and oxide elevator engine and one 4″ steam line to pump header; and also connected by one 2″ header from which is taken steam supply to exhausters. All live steam piping and domes of boilers are covered with magnesia covering.

Two 5¼″ x 3½″ x 6″ single acting boiler feed pumps connected so that either one or both may be worked.

One 8″ x 5″ x 10″ single acting pump, drawing water from river and set in pit 8 feet deep.

One 5¼″ x 3½″ x 6″ single acting ammonia pump pumping crude liquor to ammonia still and scrubbers, set in pit.

One 10″ x 6″ x 12″ single acting tar pump for loading tar into tank wagons or cars, set in pit.

One 4½″ x 2⅞″ x 5″ single acting ammonia pump for pumping concentrated liquor from storage tank.

One 8″ x 5″ x 10″ single acting pump for elevator and fitted with 1½″ pump governer and guage,—Fisher.

One 9½″ x 8″ x 10″ Crane air compressor, used in connection with the elevator apparatus.

One 12″ x 19 foot stand pipe for elevator.

One 10 foot 2″ x 1 ft. 4″ x 1 ft. 5″ open surge tank for elevator.

One 7 ft. 10″ x 7 ft. 10″ diameter steel tank supported on iron columns resting on boiler and fixing bench setting, used for water tank.

One fixing bench consisting of an 18″ x 20 ft. retort built into a setting containing a Parker-Russell semi-recuperator furnace, and provided with two mouth-pieces fitted with self-sealing lids, and connected to 4 ft. x 4 ft. x 4 ft. deep hydraulic main by means of a 6″ stand pipe, and a bridge pipe fitted with self sealing lid. Hydraulic mains provided with a tar pot, into which an overflow pipe from hydraulic main discharges.

Fixing bench is connected with outlet of purifier boxes, with a line of 6″ pipe, which also serves to connect vaporizer, and another line of 6″ pipe leads from fixing bench hydraulic main to inlet of exhausters.

One vaporizer for vaporizing nap-tha, consisting of a closed st
tank, 3 feet x 4 feet x 6 feet, containing eleven steel shelves on wh
rest eleven coils of 1" steam pipe made up of thirteen pipes to e
coil, and each coil provided with two ½" valves, so that steam n
be cut off from any coil independently of the others.

6" connecting pipe is provided with three 6" valves, one in pu
fying house, one at vaporizer and one in condenser room.

403 One ammonia concentrator, made by Michigan ammo
works, of a capacity of 15,000 tons of coal per annum, c
sisting of a steel overhead tank supported on a timber frame wo
a cast iron still on foundation on boiler room floor, a condenser c
sisting of a coil of 2" lead pipe, contained in an open steel tank s
ported on a timber frame work; an absorber consisting of a clo
steel tank set on a brick foundation, and a second absorber set alo
side of first absorber.

One #2 B Baragwanath plain tubular water heater with br
tubes.

One 3" exhaust header into which all pumps and exhausters
charge, each exhaust pipe from each piece of apparatus being p
vided with a valve. 3" pipe is also provided with three 3" val
in order to by-pass feed water heater.

One 3" discharge pipe from river pump to tank, provided w
3" valve so that water may be diverted from tank and pump
directly into water lines leading to condenser room and ret
house.

A 1½" connection provided with a float valve supplies the op
elevator tank with water from the 3-inch discharge pipe from ri
pump.

A 3" connection provided with a 3" valve is taken from pi
leading from elevator standpipe to supply water to condenser roo
purifier house and retort house.

Water pipes are so arranged that either well pump located
condenser room or river pump, or elevator pump, may supply wa
required in condenser, purifier and retort houses, and meter roo
or well water from well pump, may be supplied to purifier a
condenser houses, and river water to retort house.

A gauge board on which are placed gauges for each of the follo
ing pieces of apparatus;—exhauster, P. & A. air cooler, No. 1 co
denser, No. 2 condenser, washer, No. 1 scrubber, No. 2 scrubber, N
1 purifier and No. 2 purifier, ten gauges.

Gauges consist of two glass tubes connected top and bottom wi
brass connecting pieces, provided with stuffing boxes, each gau
provided with a brass connecting pipe fitted with a ⅜" gas cock,
& A. air cooler, and condenser gauges are 18", others are 1
gauges.

One cast iron enameled wash out water closet and flush tank.

One cupboard or wardrobe for firemen's clothes.

A line of 1" gas piping supplying 12 foot burners placed in boi
room.

Purifying and condenser house.

107 feet 4″ x 65 feet 1″ brick, gable roof. Walls 43 feet high to eaves, 22″ thick for 25 feet and 16″ balance of height.

404 Condenser room divided off by partition wall built up to the roof, 16″ thick for 25 feet, and 12″ balance of height. Foundation 3 feet 6″ deep. Roof covered with Ludowici tile (except two spaces over condenser room which are covered with glass tile to make sky-light), built onto steel frame-work, supported on six steel trusses, and partition walls.

Condenser room is provided with a frame stage and wood floor around condenser apparatus, and purifier house is also provided with a stage and floor around purifier boxes.

A wooden stair-way leads from basement of condensing room to stage floor, another leads from stage floor in condenser room up to stage floor in purifier house, and a third stair-way leads from purifier house floor to a stage floor around boxes.

A plank run way is built from purifier house to drive-way between store room and purifying house. Entire floor both in condenser room and purifying house, is paved with paving brick.

Condenser room contains:—One preliminary air cooler, 20 feet 6″ high, by 5 feet diameter, provided with two 12″ valves, and one 16″ by-pass valve, and one 9″ H. & M. angle thermometer.

Air cooler is set on brick foundation eleven feet high, foundation is hollow, or of concentric construction and space inside is connected through opening in wall of building and through aria built outside and carried two feet above ground, to atmosphere.

Two P. H. and F. M. Roots No. 5 exhausters, with engines on same bed plate, set on brick foundations, 3 feet below condenser room floor, and 8 feet above floor. Each exhauster furnished with an automatic gas governor and steam valve and two 12″ gas valves with floor stands.

One 16″ automatic by-pass valve is provided for each exhauster.

Steam piping, both supply and exhaust, is provided with valves, so that either one may be cut off independently of the other.

One P. & A. tar extractor set on brick foundation 3 feet below condenser room floor, and 8 feet 4″ above floor, and provided with two 12″ valves, and one 16″ by-pass valve, all with floor stands and one differential gauge and one 9″ H. & M. angle thermometer.

A seal pot to seal the drips from both exhauster and the P. & A. is set on floor below P. & A.

A tubular air condenser, 20 feet 6″ high, by 5 feet 6″ diameter, set on brick foundation, 3 feet below condenser room floor, and 8 feet above floor, and provided with two 12″ *inch* valves, and one 16″ by-pass valve, all with floor stands and one 9″ H. & M. straight thermometer.

404½ Foundation is of concentric construction, to permit air to be brought through arched opening, left in base, and circulated through condenser.

Two tubular water condensers, each 5 feet 0″ by 20 feet 6″ upon brick foundation, 3 feet below condenser room floor, and 8 f above floor, each condenser provided with two 12″ valves and b condensers provided with one 16″ by-pass valve with floor stand

Each condenser is connected by separate drip pipe to seal pot under washer. A 1¼″ ammonia cock in each drip pipe. Each c denser is also provided with two water connections, so that eit well or river water, or both may be supplied to condensers. 1″ ov flow pipes lead from each condenser to catch basin in boi room.

405 No. 2 condenser provided with two man holes, one top a one bottom, for cleaning.

One improved Chollar washer, built of cast iron, 5 feet x 6 feet feet 6″ deep, set on foundation, consisting of two brick piers, 8 f long, extending from a point three feet below condenser room fl to a point 6 feet 6″ above floor, and provided with two 2″ val and one 16″ by-pass valve, all with floor stands, and one differ tial gauge and one 9″ H. & M. straight stem thermometer. Was is also provided with device for varying height of water in wash

Two scrubbers 6 feet diameter by 24 feet in height, set up foundation, 3 feet below condenser room floor, and 8 feet above flo each scrubber provided with two 12″ valves and one 16″ by-p scrubber, also provided with one 9″ H. & M. angle thermometer.

No. 1 scrubber is provided with two 2″ drip connections, with 2″ cock in each connection, so that crude liquor may be run i washer, or else discharged into seal pot on condenser room fl under scrubbers.

No. 2 scrubber is provided with a 2″ drip pipe, fitted with 2″ co discharging into seal pot on condenser room floor.

Each scrubber is fitted with three layers of trays and seven 11′ 17″ oval self sealing man holes, and removable sprinklers. The scrubber is fitted with a double connection so that it may be su plied either with *dresh* water or crude liquor.

The tar and condensation from the various pieces of apparatus gathered into three seal pots, one set below scrubbers and one below washer and one set below P. & A. A separate line of 4″ c iron pipe is run from these seal pots to a tar and ammonia separat set below the P. & A. This 4″ line is supported on brick piers. the seal pot below the P. & A. an opening is left for a three in wrought iron header, which is run along the entire length of t 16″ gas main, to carry away the tar and condensation collecting the 16″ gas main between the by-pass valves.

There are eight syphon drips in the 16″ gas main, each drip ma of 1¼″ pipe, fitted with a 1¼ inch ammonia cock and a ½ inch t and steam connection provided with a half inch steam valve, so t any drip or any portion of the 16″ gas main may be steamed at a time. These drips discharge into the 3″ wrought iron head through 3″ by 2″ tees, and the drip header is also provid

with a steam connection with valve at each end, so that any stoppage may be steamed out.

One tar and ammonia separator set on condenser room floor below P. & A., and consisting of a steel tank 5 feet diameter by 5 feet 3″ deep, provided with a vertical steel partition, dividing separator into two compartments, and also provided with one 4″ tar outlet and two 2½″ ammonia outlets, fitted with devices for varying the height of the liquor contained in the separator, and also fitted with a clean-out in the bottom of the side of the tank. A line of 4″ cast iron pipe to tar well, and a line of 3″ wrought iron pipe to ammonia well, both pipes laid under condenser room floor, take the tar and ammonia away from the separator.

406 The 16″ gas main is provided with specials now closed by blank flanges, so that the present apparatus, excepting the exhausters, may be duplicated at any time, thereby doubling the capacity of the condenser room. The 16″ main is supported on brick piers, and all elbows are provided with clean-out holes fitted with self-sealing covers.

One 4½″ x 2¾″ x 5″ single acting pump is set on condenser room floor and connected to well in yard by a line of 2″ pipe. This pump is fitted with a half inch Fisher pump governor and pressure gauge, and supplies well water to meter room and scrubbers and condensers.

Condenser room is heated by one coil of 450 feet of one inch pipe, built onto railing of stage floor, and one coil of 384 feet of 1″ pipe built onto walls of condenser room.

A steam trap set into floor of condenser room takes care of the condensation from these coils, as well as the condensation from coils in purifying house and meter room. A line of 1¼″ pipe paralleling the 16″ gas main supplies steam to the drip seals for steaming out stoppages.

Condenser room is lighted at night by fourteen incandescent electric lamps, with wiring arranged so that lights on stage floor and lights on condenser room floor may be controlled independently of each other, from switches placed in boiler room.

There is one gauge board in condenser room, provided with one gauge, connected with inlets of exhausters.

Connections are also provided for introducing air for revivifying oxide, through a meter set on condenser room wall near gauge board.

Connection, consisting of a line of half inch pipe, carried across condenser room, and provided with half inch cocks and seal, is also provided for introducing nap-tha into gas main at inlets of exhausters.

A 2″ connection fitted with a 2″ ammonia cock is also provided to return a portion of the gas from the outlet of the exhausters to the inlet.

Another 2″ connection fitted with two 2″ ammonia cocks is run from the outlets of the purifiers to the inlets of the exhausters.

A line of 1″ pipe is run from the inlet of each piece of app
to the gauge board in boiler room. All of the turns in thes
are made by means of 1″ tees with opening plugged.

A cupboard is provided for holding waste, packing, etc.

Purifying house contains:—Two 24 ft. x 24 ft. x 5 ft. deep
ing boxes, constructed of cast iron plates, bolted together an
ported by eight 12″ x 31½ pounds steel I-beams, 36 feet 6
carried by walls of purifying house and 16 cast iron columns
upon sisteen 21″ x 21″ brick piers, with 42″ x 42″ footings, a
tending from a point 3 feet 6″ below purifier house floor, to
above floor.

407 Each box is provided with one layer of reversible oak
supported on seven 3″ x 5½ pounds steel I-beams, 24 fee

Each box is provided with 12″ discharge opening, in b
each opening fitted with a hinged self-sealing cover, or doo
above each opening is fitted a special trap tray provided
handle so that foul material may be dumped without digging
to the trays.

Each box is provided with a steel cover, 24 feet 6½″ x 24 fe
deep, at sides, and 34″ deep in center of ends.

Each cover is provided with a 7″ ground joint blow-off.

Each box is provided with a 10″ opening to which is con
a 10″ mercury sealed valve. A line of 10″ pipe from the
leads to a 10″ steam jet exhauster, and from the exhauster
outside of purifying house. A 9″ H. & M. angle thermom
placed in 10″ pipe.

Six 16″ valves, with floor stands and connections, so arr
that the gas may be conducted through both boxes, tandem
either box first, either box independently of the other, o
boxes together.

Valves and piping are supported by hangers from I-beams
ing boxes and tees are left for two additional boxes.

One power travelling crane carried by two steel I-beams
ing boxes.

Crane built of two heavy, latticed steel girders, connected a
by lighter girders, travelling on four flanged and turned w
Two wheels carry gear wheels, operated by pinions secured to
shaft, which is in turn driven by chain sheave and hand chai

Lifting apparatus consists of two cross heads, one with right
screw and one with left hand screw, working upon a threaded
which is driven by a gear wheel set in the center of the leng
the shaft and operated by a pinion secured to a second shaft
is in turn driven through a train of reducing gears by a
sheave and hand chain. Four chains working over four s
chain sheaves of two sheaves per set give the travel of the
heads to the covers of the boxes.

One oxide elevator consisting of a receiving boot built under
fier house floor in a pit covered with removable floors, a buck
vator encased in a wood case, and discharged into a head secu

a frame work built on to the tie bars of the purifier roof trusses. A galvanized iron spout to carry material from head to either box, and provided with rope and blocks for lowering and raising spout.

A countershaft with a link chain belt reaching from wall of purifier house to head shaft in center of house.

A 4 h. p. upright steam engine set on brick foundation on purifier house floor and connected to countershaft with a leather belt.

408 Purifying house is heated with two coils containing 288 feet 1″ pipe and built onto side of purifier boxes.

Two coils containing 500 feet of 1″ pipe built under boxes.

One coil of 1″ pipe containing 544 feet of 1″ pipe and built on purifier house wall.

A 1″ water pipe brings water from well pump in condenser room to a point in center of house near elevator, and from there to wall between purifier and condenser rooms, where a hose connection and 100 feet of half inch hose are placed above stage floor. 1″ water pipe is continued on to meter room.

A 4″ steam pipe covered with magnesia pipe covering brings steam to a point below stage floor at center of wall between purifier and condenser rooms from which point steam is distributed to the heating apparatus in purifier house, store room and meter room. A 2″ steam line carried along walls of purifier house, carry steam to oxide elevator engine and to store room. Another 2″ steam line carried along walls of purifier house, carry steam to steam jet exhauster, where a half inch pipe is taken off and run to center of purifier house for heating water required in making oxide; and to meter room, where a 1¼″ steam line is carried to nap-tha house. All steam piping is covered with magnesia covering.

A 2″ gas pipe carried on walls of purifier house, supplies gas through a meter placed in meter room, to store room and boiler room, and retort house.

Two lines of 1″ pipe connect inlets of boxes to gauges on board in boiler room. All bends and turns in these pipes are made with 1″ tees having one opening plugged.

One line of 1″ pipe carried on walls of purifier house carries nap-tha to vaporizer in boiler room from basement of meter room.

Meter and governor room.

28 ft. 3″ x 29 ft. 6″ brick, flat roof. Walls 20 feet above grade, 9″ thick. Foundation 8 feet below grade 12″ thick on brick footing 21″ wide. Roof carried on 2 x 8 joists supported in center by 10″ x 12″ trussed girder and covered with tin. Floor is Georgia pine and ceiling is also ceiled with Georgia pine. Five sliding sash windows. One wall built with blind arch so that meter may be taken through wall is necessary.

Building contains: One 10 ft. Maryland station meter set on brick foundation to bring base of meter above meter room floor. Meter is fitted with two 16″ valves and one 16″ by-pass valve with floor

stand and one 9″ H. & M. angle thermometer. Two 16″ valves and one 16″ by-pass valve, all with floor stands, for holder connections.

Connections covered with blank flanges for additional holder.

One 10″ Connelly automatic governor fitted with reducing flange connections so that larger governor may be set in future. Governor is provided with three 16″ valves with floor stands.

409 All specials in 16″ gas pipe are provided with cleanout openings closed with self sealing covers.

16″ gas piping and valves and fittings are all supported on 12″ x 12″ brick piers.

One gauge board fitted with syphon gauge to show pressure on mains.

One photometer room 9 ft. 10″ long by 4 ft. 10″ wide by 7 ft. 4″ high ceiled with Georgia pine matched, tongued and grooved ceiling.

One American Meter Company style B. 60″ bar photometer.

One lab-ratory 9 ft. 9″ long by 4 ft. 4″ wide by 7 ft. 4″ high, ceiled with Georgia pine matched, tongued and grooved ceiling fitted with 16″ x 24″ enameled steel sink set in work bench running along length of lab-ratory.

One Perry L. Hobbs ammonia testing outfit.

One American Meter Company ammonia test meter.

Laboratory is supplied with gas connections and with water from well pump in condenser room.

Meter room is heated by one 120 ft. iron pipe radiator.

Office, store room, and shop building.

103 ft. 1″ x 29 ft. 6″, brick walls, gable roof. End walls 19 ft. high at eaves at Grove street end and 23 ft. 6″ high at rear end, height taken from foundation. Walls 12″ thick.

There are two 9″ partition walls, one 20 ft. high from foundation and one 22 ft. high from foundation.

There are four 9″ cross walls carrying floors, one 5 ft. high from foundation and one 8 ft. high from foundation. Two walls 7 ft. high. Foundations are 3 feet deep and 12″ walls have 2 ft. 5″ brick footings and 9″ walls have 1 ft. 9″ brick footings.

Roof covered with Ludowici tile, built onto 1″ sheathing supported by 2″ x 6 rafters tied together by 2″ x 8″ joints.

Office is 27 ft. 6″ x 24 ft. 3″, plastered walls, floored, ceiled and finished with Georgia pine.

Office fitted with toilet room containing syphon jet water closet and overhead flush tank and enameled iron corner wash stand. One standing desk, with cupboard and drawers. One hand rail, from desk to wall. One drafting table. One black board. One roll top desk.

Storeroom is 27 ft. 6″ x 46 ft., floored with Georgia pine flooring laid over 2″ flooring spiked diagonally to joints.

re room is partitioned off for meter repair shop by ⅞″ partition.

Meter shop contains three sets meter shelves 3 feet deep x 20 feet long x 14 feet high, having a capacity for storing 600 rs. One set of shelves 3 feet deep by 20 feet long by 14 feet containing 12 shelves. Two sliding ladders hung from over- tracks in front of shelves. One work bench 10 feet long by 2 wide. Top fitted and glued together and containing three ers provided with Yale padlocks. One five foot meter prover. gasser for testing meters for tightness. One 2 ft. 6″ x 3 ft.

re room contains: One set fitting bins 20 ft. long, 14 ft. high 3″ deep containing 180 bins. One sliding ladder hung from ead track in front of bins. One set fitting bins 3 ft. by 6 ft., ining 18 bins 15″ deep. Two sets fitting bins 3 ft. x 5 ft. 6″, ining 30 bins, each 2 ft. deep.

e tool room consisting of a platform 12 feet by 19 ft. 6″, sup- d by store room wall on one side and four 2″ pipe posts on other Tool room provided with shelves for tools.

ting shop is 29 ft. 6″ x 26 ft. 6″, floored with Georgia pine ng laid over 2″ flooring spiked diagonally to joists. Contains: e type C. Westinghouse alternating current 7½ h. p. motor, nted on a platform made of 4″ x 4″ sticks, framed together. main shaft 2″ x 10 ft. hung in two shaft hangers. One 48″ x odge wood split pulley. One 12″ x 15″ face Dodge wood split y. 60 feet 3″ double leather belting. 36 feet 5″ double leather ng.

e # 7 Jarecki pipe machine, with extra set of dies, extra head ld dies, and countershaft. Pipe machine is set on steel pans 7 ong by 3 ft. 6″ wide by 1″ deep.

ve fitters' benches, each bench consisting of a 2 ft. x 5 ft. white top, provided with two sliding drawers, with Yale padlocks, d to two 2″ x 2″ x ¼″ angle iron standards, 2 ft. 6″ high, and t. x 5″ x 2″ thick white wood shelf, bolted to angle iron sup- rivited to standards. Standards braced by two ½″ rods.

e work bench 2 ft. 6″ wide x 10 ft. long. Top fitted and glued her and containing three drawers provided with Yale padlocks.

e white wood standing desk secured to wall.

e roll top desk for foreman.

e small cupboard for small drills, tacks, etc.

e 20″ x 30″ cast iron sick fitted with steam connection for ng water.

ilding is piped for gas with 13 ell burner cocks, in fitting shop, e ell burner cocks in store room and meter shop, one 4 burner, hed brass fixture, and nine polished brass stiff brackets and pendent cock in office.

ilding is heated with steam, brought by a 2″ line from purify- ouse, by one iron pipe radiator, of 120 square feet in office; ron pipe radiator of 60 square feet in office; four coils contain-

ing 585 feet of one inch pipe in store room; one coil containing 203 feet of 1" pipe in fitting shop.

Condensation is taken care of by steam trap located in basement of building.

411 Holder.

300,000 cubic feet capacity. Consists of inner section of 83 feet diameter x 28 feet deep. Outer section of 85 feet diameter by 28 feet deep. Set in steel tank 87 feet 6" diameter x 29 feet deep. Tank is set on concrete foundation 10 feet deep on river side and 2 feet deep on opposite side. Connections are 20" and are set in a brick pit 15 feet wide x 18 feet x 8 ft. 3" deep, divided in center by 12" partition walls. Walls are 12" thick. 11 ft. 6" of pit under holder covered with railroad iron joists spaced 16". Two 20" drips set in pit. Connections outside of drip are 18". Pit outside of holder is floored over with $\frac{7}{8}$" flooring.

Coal house No. 1.

Consists of an irregular L shaped building, 166 feet 8" long on long side of ell, 84 feet 5" long on short or bottom side of L, 118 ft. 6" back again, 27 ft. in towards long side, 35 ft. 1" up towards top of L, and 51 feet across top of L. Covered with a gravel roof carried on sixty-one 8" x 8" posts varying in length from 21 ft. 8" for posts on side of house, to 23 ft. 4" for posts in center of house. Posts rest on 22" x 22" cap stones built upon 2 ft. 6" x 2 ft. 6" brick piers, 3 ft. deep. House is sheathed with $\frac{7}{8}$" siding from a point 10 ft. from ground to eaves.

Walls of cold storage room are constructed independently of coal house and consist of 3" plank walls 13 ft. high, held in place by 8 6" x 6" oak timbers, 16 feet long, tied together at top, by 166 1" rods about 16 ft. 6" long, and bottom ends buried in trench 3 ft. deep.

10 lines of 6" x 8" timbers across coal shed and four lines of 6" x 8" timbers along length of coal shed, all timbers intersecting and bolted to posts carrying roof, with wrought iron angle pieces to act as braces.

Floor of coal house consists of 3" plank spiked to 4" x 4" oak sleepers. Roof is fitted with galv. iron hanging trough along each side and six galv. iron down spouts.

Coal shed is wired for two arc lamps with switch placed on post near scales. Coal house contains one 4 ft. x 6" miners' scale manufactured by H. N. Strait Mfg. Co.

Coal house No. 2.

Is an L shaped frame building, each side of ell is 128 feet long and width of each side is 58 feet. Gravel roof supported on frame work carried by 35 12" x 12" posts varying in length from 19 ft.

for posts along sides to 23 ft. 6″ for posts in center of ends of se; and 39 6″ x 6″ posts varying in length from 20 ft. to 21 ft. 6″. posts are bolted to cast iron shoes built upon brick piers from 3 feet deep and are tied together across tops with 6 x 18″ stringers ed on and braced between posts with 6″ x 6″ braces bolted to ts with cast iron angles. Posts are also tied together by 98 1″ rods about 16 ft. long.

Coal storage is provided for by 2″ plank walls carried from floor to eaves on 12″ x 12″ posts, and on 35 additional 12″ 2″ posts 11 feet long bolted to cast iron shoes built onto brick rs from 3 to 4 feet deep. Posts are held in place at top by a line 2″ x 12″ waling extending entirely around coal house. Waling olted to each post. Entire floor is paved with paving brick. Coal shed # 2 is connected to retort house by means of a wooden tle 1160 feet long, consisting of a 3″ plank floor spiked to four x 10″ stringers carried on 4″ x 10″ framed bents about 2 feet h and spaced approximately 10 feet apart.

Coke platform.

Consists of a 2″ plank floor having an area of 8 ft. 10″ x 59 ft. at end of retort house and an area of 103 ft. 3″ x 19 ft. 6″ along ve Street side of retort house. Platform is carried on 12″ x 12″ ts and is bolted securely to retort house wall. Platform has stor- capacity for six car loads of coke. Side and ends of platform ng side of retort house are sheathed with 1″ boards to make rage shed underneath platform.

Coke storage in yard.

s an irregular shaped area of 110 feet long along # 1 coal house, feet along switch, 80 feet back to trestle, and 60 feet back along tle to coal house; floored with 2″ plank spiked to 4″ x 4″ sleepers ced 4 feet apart.

Tar well.

Consists of a brick cistern 23 feet 4″ inside diameter and 14 ft. 6″ p with walls 18″ thick, brick laid in cement mortar. Tar well plastered with Portland cement and is covered with a roof of $\frac{1}{8}$′ gued and grooved ceiling.

Ammonia well.

Consists of a brick cistern 14 feet 8″ inside diameter and 13 ft. 9″ p with walls 18″ thick, brick laid in cement mortar. Ammonia l is plastered with Portland cement and is covered with a roof of tongued and grooved ceiling.

Concentrated ammonia tank.

Consists of closed steel tank 10 ft. 3″ diameter by 7 ft. 2″ deep, set in a brick cistern 17 ft. inside diameter and 10 ft. 3″ deep. Brick laid in cement mortar, walls 12″ thick. Cistern is roofed over with 4″ x 6″ plank set on edge and spiked together.

Naphtha storage.

Consists of a closed rectangular steel tank 14 feet long by 8 ft. 11″ wide by 8 ft. 7″ deep set in a brick cistern 17 feet long by 11 ft. 11″ wide by 10 ft. 6″ deep with 12″ brick wall laid in cement mortar.

413 An elevated closed steel tank 4 ft. 1″ diameter by 3 ft. 10″ high set in a tank room 10 feet square by 7 ft. 2″ high raised 16 ft. 5″ above floor over lower tank in ground.

Framing supporting tank is sheathed with 1″ sheathing covered with building paper.

Building is also used as pump house and contains: One 4½ x 2½″ x 5″ single acting pump; one heating coil containing 100 feet of 1″ pipe.

Well.

Brick walls are 18″ thick. Is 5 ft. 2″ diameter by 30 ft. deep.

Drainage system.

Consists of 64 feet of 30″ sewer laid from end of city sewer and joining iron pipe under R. R. tracks; 94 feet of 20″ sewer; 230 ft. of 12″ sewer; 220 feet of 8″ sewer; 545 feet of 6″ sewer; 125 feet of 4″ sewer.

Depth of sewer runs from 7 feet at junction with 30″ sewer to 5 feet at west corner of retort house.

Six manholes—one at junction of 30″ sewer 12 feet deep; one in boiler room 5 ft. deep; one in passage between retort and purifier houses at upper end 5 ft. deep; two in retort house 5 ft. deep; one in yard near well 3 feet deep.

All manholes excepting one at junction with 30″ sewer are provided with cast iron covers fitted in cast iron frames.

Yard connections.

One line of 6″ wrought iron pipe 200 feet long from river pump in boiler room to river.

One line of 4″ wrought — pipe from tar well to tar pump, 30 ft. long.

One line of 3″ pipe 180 feet long from tar pump to side track.

One line of 2″ pipe 150 feet long from well to well pump in condenser room.

One line of 2″ pipe 50 feet long from tar pump to end of boiler
ouse to load tank wagons.
One line of 1½″ pipe 60 feet long from crude ammonia well to
ude ammonia pump.
One line of 1½″ pipe 120 feet long from concentrated ammonia
ell to concentrated ammonia pump.
One line of 1½″ pipe 190 feet long from concentrated ammonia
ump to switch to load tank wagons.
One line of 1¼″ steam pipe 115 feet long from meter room to
aphtha house.
One line of 1″ pipe 115 feet long from meter room to naphtha
ouse to carry naphtha to boiler room for vaporizer.

14 Pipe shed.

Consisting of frame building built onto store room building
eathed with ⅜″ tongued and grooved ceiling fitted with racks to
old 1½ car loads of pipe and having two pair double doors in
ont.

Scales.

One wagon scales, H. N. Strait Mfg. Co. six ton, 8 ft. x 22 ft. plat-
rm set in brick pit with 18″ walls 4 feet deep.

Track scales.

H. N. Strait Mfg. Co. 80 ton 44 ft. scales set in brick pit with
alls 18″ thick and 5 feet deep.

Side tracks.

One P. & P. U. side track along coke platform.
One P. & P. U. side track across track scales, through # 1 coal
ouse, across yard and along # 2 coal house.
One C. R. I. & P. side track along river side of property and # 2
al house.

Fencing.

280 feet (not including gates) of 8 ft. tight board fence carried on
osts spaced 7 ft. 6″.
One wagon gate at scales 11 ft. 9″ wide x 7 ft. 4″ high. Gate posts
arried up 15 feet high and braced across tops.
One foot gate at scales 3 ft. 6″ x 7 ft. 4″.
One double gate over track at # 1 coal house, gates 8 ft. 1″ x 7 ft.
1″.
One gate in fence between # 1 and # 2 coal houses. Gate 11 ft.
″ x 8 ft. 2″ hung from posts carried up 15 feet and braced across
ops.
One double gate across tracks at # 2 coal house. Gates each 6 ft.
½″ x 6 ft. 4½″.

One gate in fence along Rock Island track 7 ft. 7 ft. 4" hung from posts carried up 15 feet and braced across tops.

415 You will assume in your further examination as a witness, that on September 1st, 1900, the plant of the Peoria Gas and Electric Company had mains and services laid in and through the streets and alleys of the city of Peoria for the distribution of gas as follows, to-wit:

Mains.

1758 feet of 16" main of which 160 feet is under pavement.
20768 feet of 12" main of which 11225 feet is under pavement.
3482 feet of 10" main of which 58 feet is under pavement.
20224 feet of 8" main of which 13234 feet is under pavement.
12874 feet of 6" main of which 5474 feet is under pavement.
80852 feet of 4" main of which 9792 feet is under pavement.
260 feet of 2" main.
Total of 140223 feet of main of which 39943 feet is under pavement.

Services.

3	3"	services, total length	872 feet
2	2½"	services, total length	374 feet
652	2"	services, total length	37244 feet
1503	1¼"	services, total length	111369 feet
266	1"	services, total length	29393 feet
Total of 2426 services, total length			179252 feet

416 You will further assume that on September 1, 1900, the city of Peoria, Illinois, and territory adjacent thereto, was located upon the westerly bank of the Illinois river near the center of said city upon ground gradually sloping westerly for a distance of about 1½ miles, and extending along the river for a distance of about 5 miles and had a population of about 65,000 inhabitants; and that on September 1, 1900, the plant above described of the Peoria Gas & Electric Company, as shown upon Exhibit "1," was then located about the center thereof on the bank of the Illinois river, which plant was constructed during the year preceding September 1, 1900, with a capacity of about 500,000 cubic feet of coal gas per day; you may also assume that on September 1, 1900, there was in the city of Peoria another gas plant owned by an independent company which said last named plant had been in operation for about 40 years and had a capacity of about 500,000 cubic feet of gas per day; you may also assume that Exhibit "1," which has been shown you and which is in evidence in this case, represents the general plan of the plant of the Peoria Gas & Electric Company upon September 1, 1900, and that connected with said plant was a gas main system of about 26½ miles in length extending through a large por-

tion of said city consisting of 16, 12, 10, 8, 6, 4 and 2 inch mains properly connected for the distribution of gas; and that connected with the gas main system there were 2426 services of an average length of 80 feet each, extending into the premises of the consumer, that said plant was constructed during the year preceding September 1, 1900, and was on that date manufacturing and delivering gas to consumers through its pipes, mains and services and meters at the rate of about 50,000,000 cubic feet per annum; you may also assume that at the time of the construction and completion of said gas plant the wages of ordinary labor were $1.50 per day, that stokers could be employed at the rate of $60 per month, head stokers at $70 per month, that Youghiogheny coal could be purchased and delivered at the works at $2.80 per ton, that there was a local market for coke at an average price of $3.25 per ton, that the tar by-product could be sold at 5c. per gallon, that the ammonia by-product could be sold at 8c. per pound, that cannel coal for enriching could be bought at $3.00 per ton, that gas oil for making water gas could be bought at 3¾c. per gallon, that coke for making water gas could be bought for $4.00 per ton and that the company was not bound by any requirement as to the candle power of gas to be furnished to consumers; you may further assume that the Peoria Gas & Electric Company was incorporated under the laws of the State of Illinois in the spring of 1899, for a period of 50 years, that being the limit of time allowed by the laws of the State of Illinois for which a gas company could be incorporated; you may also assume that in the month of May 1899, the Peoria Gas & Electric Company received a license or franchise from the city of Peoria authorizing it to construct a gas plant and lay pipes, mains and services in and through certain of the streets, avenues and highways of said city, and distribute and sell gas to said city and the inhabitants thereof, extending for a period of 99 years, and that said license-franchise in said city is not exclusive. What in your judgment would be the fair and actual cost price of the construction of said plant assuming that the same was constructed during the year preceding September 1, 1900?

417

Objected to as incompetent and because no proper foundation has been laid for the evidence.

The MASTER: I do not think any proper basis has been laid in this case for a large portion of the hypothetical question.

Mr. RITCHER: Counsel for complainant before resting its case proposes to prove each and every hypotheses mentioned in the question.

The MASTER: The witness may answer subject to the objection.

A. I place the value of the construction of the plant described in the question, independent of the cost of the land, independent of any charges against it for interest during the course of construction, independent of any cost of organization, cost of franchise or cost of superintendence, meaning to include the native cost

418

of the material and the labor necessary to erect it and put it together, at $175,000.—$25,000. per bench.

25. Assuming the premises aforesaid in your judgment would it have been more expedient to have constructed a coal gas plant in said city of Peoria, at the time the same is assumed to have been constructed, than a water gas plant, if so why?

The MASTER: More expedient for what purpose?

Mr. IRWIN: More expedient as a investment.

Defendant objects to the question because proper foundation has not been laid.

The MASTER: I think the witness has qualified himself as an expert both as to coal and water gas.

A. I believe a coal gas plant is better than a water gas plant.

The MASTER: The question is would it have been more expedient in the city of Peoria under those conditions?

The WITNESS: Yes, I think it would. Now do I give the reason why?

The MASTER: If the counsel desires you to.

Mr. IRWIN: Yes sir.

The WITNESS: In the first place the price of oil is very fluctuating and that is the basis of your cost in a water gas plant; it is not uncommon for it to fluctuate from 100 per cent. to 150 per cent.; it is a commodity that is handled by the Standard Oil Company who
419 controls, as I am informed, 93 per cent. of the entire out-put of petroleum in this country and, therefore, you are subject to their whims and caprices; if the Standard Oil Company controls the product you have to use, then they control your profits and it is only a question of their figuring how much they want to take out of your business and then help themselves to it; that is a reason sufficient of itself alone. I will say that if the price of the commodities entering into the manufacture of water gas could be depended upon then the question of whether a man owned water gas plant or a coal gas plant would depend upon the cost of producing the gas. Now, I maintain that in Peoria you can produce coal gas cheaper than you can water gas for the reason you have no residual product of any account whatever from water gas, a little infinitesimal amount of oil tar and you are through, and for the further reason that the specific gravity of water gas is about 600 and a fraction, reckoning the atmosphere at 1000; the specific gravity of coal gas is about 420 rated on 16 to 18 candle gas. Now, it follows that a heavy gas, as heavy as water gas, must be very sluggish in movement, in traveling through the pipes, the friction greater, whereas gas of lighter specific gravity is a good deal quicker, moves better and gives better satisfaction to the consumer.

26. I understand you to have testified on the premises before stated with respect to the manufacturing plant of the Peoria Gas & Electric Co. in the city of Peoria on the assumption set out in the previous question, that it would cost constructed during the year

previous to September 1st, 1900, the sum of $175,000. What in your opinion would be the fair market value of said plant, on the assumption aforesaid with respect thereto, on the first day of September, 1900, assuming that at that time the company was manufacturing and selling to consumers gas at the rate of about
420 fifty million cubic feet per annum?

A. You mean the plant including mains—the whole establishment?

27. The same portion you testified to before that would cost $175,000.

A. That would only apply to the machinery upon the ground and the works themselves.

28. Then the works themselves you testified to that would cost $175,000.—the question is what would be the market value of the same thing at that time?

A. To anybody that wanted it, the market value of that particular machinery located at that particular point would be $175,000 plus what would be a reasonable profit for the construction—understand me that I am only alluding to the machinery on the ground and buildings at the works.

29. Yes, I am trying to confine my questions to what you confined your answer to. Assuming the premises set out in the previous question with respect to the mains, pipes and main system of the Peoria Gas & Electric Co. in the city of Peoria, what in your judgment would be the fair actual cost of said mains and the laying of them in the streets and connecting them ready for the delivery of gas to consumers?

Objected to as incompetent and because no proper foundation has been laid.

A. To answer that intelligently requires me to assume certain things; in the first place I assume that the soil in the streets you have to excavate in does not consist of rock, heavy boulders, quick sand, clay or such soil as will cave in, but such soil as you can ordinarily shovel in a ditch. I should say that from the out-
421 let of the holder to the end of the last main 80 cents a lineal foot would cover it plus a proper allowance for anything in the way of boulders, clay, quick sand or rock you might encounter; also, I do not assume that there are any paved streets; if there is any pavement to encounter, of course it will increase the expense to the extent of the removal and return of the pavement to its place.

30. What is the ordinary cost of excavating through and the replacement of an asphalt pavement laid upon a concrete foundation for the purpose of laying a gas main in the street?

Objected to same grounds as before.

A. In answering that question, I would have to be governed by what it costs us here in this city; I am too rusty in my memory to remember the exact cost we incurred years ago in laying mains,

but we paid the city of Minneapolis for replacing asphalt pavement on a six inch concrete foundation where we disturbed it $2.42 and $2.47 per yard. Now in the running of a ditch where you are laying pipe, you will disturb the paving about a yard and one half in width, if you do it properly, if there is no quick sand, therefore, you would have a yard and one half of expense to every three lineal feet and if you will put those figures together you will get at the cost.

Defendant objects to the foregoing answer as incompetent and moves the court to exclude it.

31. What in your judgment would be the cost of replacing a brick pavement laid upon a six inch concrete foundation for an excavation for the purpose of laying a gas main in the streets?

Objected to same grounds as before.

A. We have just laid several thousand yards of brick pavement of the character you have described which cost us here $1.82 a yard. Now it would differ from that practically whatever
422 the difference is in the cost of transportation from Illinois where we get the brick to Minneapolis and to Peoria and I am not informed what that would be. We recently paved our yard at the works here this fall and that is why I am so familiar with it.

32. I understood you to testify that you have constructed a number of gas plants. During the construction of a gas plant up to the time of the commencement of the manufacture and delivery of gas to the consumers, is interest upon the investment, that is on the money invested from time to time up to the time of completion a proper charge against the cost of the plant?

Objected to as immaterial and incompetent.

A. I have always regarded it so.

33. Is it among gas men in the construction of gas plants considered & taken as an ordinary portion of the cost of the plant up to the time of completion and ready for the manufacture and delivery of gas?

Objected to as immaterial and incompetent.

A. Most assuredly it is a portion of the expense just the same as any other part of the investment. It is not confined to gas plants particularly; I own several buildings here in town and I have always charged them interest during construction.

34. In the organization of a gas company, is an expense ordinary and necessary in and about the incorporation, organizing of the company and the organization of its business force?

A. It is.

35. Assuming that a gas plant cost fully completed ready for the delivery of gas in a city of about 65,000 inhabitants where another gas plant was previously located and doing business and had been for about 40 years previous thereto and was then doing business,

and where the new plant fully complete and ready for the
423 manufacture and delivery of gas to consumers cost about the sum of $432,000., what in your judgment would be a reasonable expense in and about the legal incorporation and organization of the company and the organization of its officers and business force.

Objected to as incompetent, immaterial and because no proper foundation has been laid so far as the city of Peoria is concerned.

The MASTER: I suppose it simply calls for the knowledge of the witness based upon his general experience in the organization of gas companies at different places.

Mr. IRWIN: Yes sir.

A. I am simply including in my answer now the cost of organization, incorporation, expense of securing franchise, time and labor, putting your company into shape so you are ready to commence business, including the election of officers and the time that may elapse between the inception of the enterprise up to the time you are ready to go to work. In my estimate of those things, I have always figured on 5 per cent. of the cost of the property incurred in those expenses and I have not been very far away from it.

(The MASTER:)

36. When you refer to the franchise, do you mean the right from the city?

A. Yes, some of those are more expensive than others.

(Mr. IRWIN:)

37. Assuming the premises aforesaid with respect to the construction and character of the plant of the Peoria Gas & Electric Co., and that the company was organized, chartered, during the 18 months previous to September 1, 1900, would the salaries of the officers and managers of the company be a proper charge against the cost of the plant during the period of construction and up to the time of the commencement of the manufacture and delivery of gas?

424 Objected to as incompetent and immaterial.

A. Most assuredly; I don't know of anybody that will work 18 months for nothing.

38. What in your judgment would be a reasonable amount to be charged against the cost of a plant of the character and size of the plant of the Peoria Gas & Electric Company, as described in the previous question, for superintendence of the building, construction and completion of the plant, assuming that the plant was built by the company itself and not by contract?

Objected to as immaterial, incompetent and because no proper foundation has been laid.

A. During how long a period in construction?

39. Assuming that the construction continued for a year previous to September 1, 1900.

A. I should say from 5 per cent. to 7½ per cent. of the cost of the construction.

40. Assuming the premises aforesaid with respect to the service pipes of the Peoria Gas & Electric Co. leading from the gas mains in the streets into the premises of the consumers, about what would be the reasonable cost of such service pipes laid and connected for the delivery of gas to the consumer?

Objected to same grounds.

A. I will have to answer the question assuming there was about the average amount of stores, residences, etc.

41. Yes sir.

A. I should say, taking all grades and sizes of service pipe from the street mains up to the meter connection that 20 cents per lineal foot would be about the average price; that includes pipe, ditching and filling with an addition to be added to that of a proper and necessary amount in case rock or clay was encountered, or in case paving had to be removed and replaced. I am answering on
425 the supposition it is straight soil to be excavated.

42. Assuming that the Peoria Gas & Electric Co. on the first of September, 1900, had in its service about 1758 meters, what in your judgment would be the fair cost price of such meters tested ready for the measurement of gas to the consumer?

Objected to same grounds as before.

A. Have you any prepayment meters; my company have about 4000 prepayment meters in use and they are very expensive.

43. No, ours are straight ordinary meters.

A. For instance, you take a five-light meter and a prepayment meter is worth double nearly the value of an ordinary meter. Would they average all sizes?

44. Yes sir.

A. I would put it at $7.50 to $8.00 a meter.

45. Would that be the fair market price of them at that time—the average meter?

Ans. I think so.

46. What in your judgment would be the fair cost of the settings of the same number of meters set in the premises of the consumer ready for the measurement of gas together with the connections?

Objected to as incompetent and because it has not been shown that the witness has any knowledge of the cost of labor in the city of Peoria.

47. Assuming that ordinary labor was $1.50 per day.

A. You cannot use ordinary labor for that work, it takes a gas fitter or plumber. I should place it at $2.50 a meter; that includes the unions, the lead connections, the soldering of them, the shelf and the cock.

48. Would that in your judgment be the fair market price of such
bor and material in making such settings?

26 Objected to as incompetent.

A. That is a very close price in my judgment.

49. What elements and forces contribute to the depreciation of a
as plant and its mains and how and to what extent do they act?

A. You mean the destruction by the elements?

50. Yes, all forces that contribute to destroy a plant.

A. Well, I will commence at the works. I have explained about
ie regenerative benches; those benches have to be filled on the
verage about every 18 months, that is, the retorts burn out and we
ave to renew them; every time they are fired up and let down
ey go through a heaving process; they are bound as close as they
n be and they crack and heave in every conceivable shape; the
enewing of the retorts we always charge, and I think it proper to
o so, to repair account and sink it in our expenses for that year,
ut ultimately the bench becomes absolutely destroyed a[illegible] we have
o tear it down to the foundation and rebuild it new; as I have be-
ore stated we are rebuilding 8 benches of that character now that
ere originally built 16 years ago, so the destruction of those benches
ompletely has taken place within 16 years. From that you can
ompute the depreciation on that item, which would be about 6¼
er cent. per annum. Now, you can take the iron work pertaining to
he connections and that will not depreciate so fast except the mouth
ieces; you will have to renew the mouth pieces maybe in about 10
ears, the mouth pieces are made of clay and it is constantly heated
ed hot and within 10 years—we have never had one last but
hat it would crack, break and fall down in ten years; I should
ay that would be about 10 per cent. The hydraulic main and con-
ecting pipes to the scrubbers I don't think would depreciate over 3
er cent. The scrubbers themselves would probably not depre-
ciate over 3 or 4 per cent. Now, we come to the exhauster
27 and the moving machinery; that you can place at 10 per
cent.; it is run continuously day and night and after it has
un 10 years you will find it has to go to the scrap heap. The puri-
ying boxes will go to pieces considerably faster; the purifyers will
o to pieces, lids and covers will be eaten up entirely in three or
our years, I put that at the outside at a depreciation of 20 per
ent. The holders can be counted upon to depreciate 5 per cent.
nd it is very favorable to the holder at that; the roof will go down
efore that time. Now coming to the mains in the street; the depre-
iation of mains in the streets depends upon two or three things;
irst the condition of the soil; if you have filled ground that contains
shes and all sorts of refuse, it decomposes and sets up acid action;
have had pipes that had to come out inside of 18 months and I
ave had pieces of it that would come out inside of 12 months, and
hen perhaps 100 feet from that point it would be good again; in
hat class of soil it is very difficult to determine depreciation; it is

one of those things you have to take just about as it comes to you, but I should say in that class of soil that an average of ten years as the life of the pipe would be all you could expect of it; now you take sandy soil, soils that don't contain any acid, and I should put the life of the pipe at 30 years before it would go out; that would be practically 3 per cent.; going into clay soils that contain acid like blue clay and I would not think the pipe was of any value after 15 years. Now that is so much for the destructive elements. I wish to say that I was called by Mr. Forstall to go to New Orleans where they had clay soil throughout the city and there after they took all the precautions possible in the way of tarring the pipe and even in some instances hauling sand and making a sand bed to lay the pipe in and surrounding the pipe with it they could not get a main to stand over 10 years.

428 (The MASTER:)

51. They have salt water there have they not?

A. It is a sort of salty clay or clay containing salt and acids; some clay contains more and some less, nobody can tell anything about it untill after he has analyzed it and knows. Roughly speaking in my mind—we have had experience right here in Minneapolis covering 25 years—last year we took up two blocks of pipe and removed it that was just simply a hole in the ground with a lot of rust lying there, yet it was not a clay soil, it was a sort of a mixed loam most of it, some of it had been filled a little. Now understand we are only 30 years old here since the first pipe was laid; I don't know when this particular pipe was laid; but I don't count a main of any value whatever, it is absolutely worthless and gone, you might as well drop it off your books if it lives 25 years and I should sooner say that 20 years was the fair average life of the street main.

(Mr. IRWIN:)

52. What depreciation is there to services and meters generally?

Objected to as incompetent and immaterial.

A. I am only giving you the result of my experience generally and I don't profess to be infallible; another man might take another view of it; of course, these things depend on a man's experience and every man has a different experience in those things but it is a subject I have thought of and have had to fight pretty strongly a good many years and I have had enough experience at least to give my opinion on the subject—interrupted.

The MASTER: The question only calls for your knowledge based on your experience.

The WITNESS: Now, another thing enters into the depreciation of mains, viz: The changing of grades in streets; for instance the cutting down of a grade or the filling of it; we have had
429 experience here where we have abandoned our pipe caused by the city changing the grade of the street; during the chang-

ing of the grade we could not cut our customers off and we preferred that the city fill on top of us and afterwards we cut the pipe off and laid a new one; of course, that is a waste to that extent; those contingencies may or may not arise in Peoria, I don't know anything about it; again we have had losses by the renewing of different public work of different kinds where it disturbed me, for instance sewers; our pipe is laid in the street and a sewer comes along, the soil is sandy, it caves in, carries our pipe with it and leaves it a total wreck when they get through with the sewer and we have to take the pipe up and throw it away or patch it up, piece it and fix it up which is practically renewing the expense of the main; the same thing applies to a certain extent particularly here where we have to go so deep to avoid frost. Now there is another source of depreciation, for instance, every gas works is laid out and built on the best judgment of the promoters with reference to the future consumption and trunk lines are laid through streets with the view of furnishing that consumption; you go on for three, five or ten years and you find your heavy consumption shifts from this particular locality and has gone to another place and this trunk main is practically useless; you might as well have an ordinary feeder; you have no business on it any more than an ordinary main would take care of but you have to take that up, relay it in another place or be satisfied to let it lay there and do the work of a smaller main and lay a larger main in the other district; if you take it up you have to cut all joints, you have to waste 6 inches or more at every length, you have to waste the laying, waste the gaskets, all the work that is incident to the connecting up of the services to a new main put in and it is a practical destruction of the main when you have to take it up and remove it; such alterations and changes are a constant source of expense; you are never without it. For instance we may have tomorrow a case of electrolysis and if we find we have a trunk main all cut to pieces and honey combed by electrolysis, or anything of that kind, of course the repairing of it we charge to repair account but as to the destruction of the main, what are you going to do about that, you go to an electric company and charge them with it and one lays it to the other and there is no human ingenuity that is able to prove where the current comes from; we have had instances of electrolysis in a street where there was not an electric wire, which had unquestionably come down from another avenue following the rails of the street railway until it had come to some certain point and then cut through the block jumped on to our pipe and pitted it; it is the most frisky thing you can imagine; we had one case where it went through a block of buildings where there was no other way for it and there was no other electricity to get there except that; it is a constant source of destruction and renewals of gas companies.

430

53. What depreciation arises to service pipes and meters which are in the premises of consumers?

A. The same rule applies to service pipes except in a more rapid ratio; the iron is thinner and it takes less time to eat it out.

54. What depreciation is there to an ordinary meter?

A. We place the ordinary meter at 10 per cent.; that is the result of our experience. Of course, I want you to understand these are simply averages I give to you; I don't say to you that every meter is destroyed in ten years but the result of our experience is that on the average they go to pieces in that time. I will tell you why. Here is a meter I set in this room on the shelf; it is only moder-
431 ately worked, it is dry and well taken care of and will last a long time; then say I go across the street and set one in an area way where it is damp and wet and they are piling wood and coal down on it or tumble boxes up against it and it is overworked, that meter will go to pieces very quickly; those are the chances we have to take and on the average, my experience tells me the life of a meter cannot be counted on for over 10 years.

55. Taking an ordinary gas plant as a whole, what in your judgment is the general annual average depreciation of the plant, that is upon the cost of the plant?

Objected to as incompetent and immaterial.

A. From 6 to 7 per cent.

56. Does that cover the manufacturing plant and distributing system necessary in and about the manufacture and delivery of gas to the consumer?

A. Absolutely everything from the coal pile to the cash box, that is what I figure.

57. In figuring that general average annual depreciation, do you include the value of the real estate?

A. No, that is just as liable to appreciate as it is to depreciate.

58. In what manner in your opinion does good business policy require this depreciation to be taken into account in conducting the business of a gas company?

A. I will answer that by saying that we do ourselves. We set aside, and it enters into our cost, every year 6 per cent. of the structural value of our property as we consider it.

59. By structural value, do you mean the structural cost?

A. The structural cost of our property. Now, this we set aside as a fund, known to us as a fund to make good depreciation and destruction of the property. Say it takes about $75,000. a
432 year for that purpose; I don't mean to say that we take $75,000, put it over in the bank and let it lay there, but we take that $75,000. and expend it in extensions, in betterments and additions to the plant—not in repairs. Now, that goes into our depreciation account and stands and is not capitalized by us at all. For instance, last year we spent $117,400. in extensions and betterments, not in repairs; that goes as an uncapitalized sum and never will be capitalized; now when we get around to the point—this year it will be in the neighborhood of $100,000., perhaps next year

we will not put in $50,000., but I think we have about $300,000. unexpended in that fund at the present time which we have laid aside for that purpose and that $300,000. will wait to make good the destruction of buildings, etc. To illustrate, we this year tore down a building we built 20 years ago, it was shaky, unsafe, we ripped it down and we charged only into extension account that portion of that building represented by the good brick we cleaned off and the balance was sunk out of the depreciation fund.

60. Why do you set aside that amount and use it in the manner you have stated?

A. Simply because if we should set aside $75,000. this year and put it in the bank that amount of money would be idle until we wanted to rip out something and renew it and it might be years before that time came. For instance, take the Peoria works, they are now new, but she will commence to feel this depreciation in about 10 years from now; they would not care to set aside a large sum of money and let it lay idle for ten years but if they take it and add it to the property they increase the value of the property as much as the depreciation has reduced its value.

61. Aside from the general depreciation, concerning
433 which you have testified as resulting to a gas plant what are some of the hazards of the gas business as an investment?

A. One of them is an indiscreet city council granting an opposition franchise and it is a very great hazard too. To illustrate my meaning: the Peoria Gas Company was equipped to do the business at Peoria, that is the old company, and you let the Peoria Gas & Electric Company in to split its business right in two, so you have practically duplicated the capital in order to supply one community; certainly in the end the Peoria Gas Light Company's property has been depreciated just to the extent of the addition of the new capital. Now you gentlemen of Peoria can understand how much that is as well as I can. When you take into consideration this that they cannot do business outside of their district, they cannot sell nor they cannot do anything but stay there and take what comes to them; a merchant that goes in business with a stock of goods can, if he meets competition that is ruinous to him, take his goods and move to another town and his goods are valuable and he loses practically nothing except the expense incident to removal; you cannot take up a gas company, however, and move to another town; you either live or die there and you are ruined absolutely, totally or partially as the case may be. Now, I ask any gentleman here present if he had stock in the Peoria Gas Light & Coke Co. when it was assaulted by the Peoria Gas & Electric Co. what would have become of it, it would most assuredly shrink in value. That is one of the hazards; a city council when it grants another franchise to another company places both companies in a position where they cannot do justice by the people; it splits the town say of 65,000 people in two, making two towns practically of 30,000 people each and when you consider

further the dangers incident to manufacturing gas you will find
434 the ability of a gas company to reduce its price is just in a ratio to its increased output all the time; the Minneapolis company charged $6.50 per thousand when it first turned a light on this town and it is now charging $1.25 a thousand; it lost money at $6.50 a thousand and it is making money to-day at $1.25 a thousand which is due simply to the large bulk of business it does, and when you took away one half of the business from the old Peoria company you took away its ability to sell you cheap gas; that is the fact and absolutely true.

62. Is there any other hazard you think of?

A. There is the hazard of competing lights. For instance, as I have heretofore described, we have various kinds of house machines for lighting houses; you have the kerosine business, the acetoline and electricity. Fifteen years ago we gas men used to sit in our office and if a man wanted gas he would come in and ask for it and we put it in when we got ready; we did not exert ourselves at all to get business, taking it for granted that the people knew we were here in business and if they wanted gas they could come and get it. In those days a man had to come into the office with his hat in his hand and be very polite or we would kick him out; today all that is changed, we have solicitors on the street, we have all manner of advertising, we try to bring our goods to the attention of the people, we are doing our best to build up business and push it forward, for if we don't do it we will go into bankruptcy.

63. Is electricity a strong competitor of the gas companies now for illuminating purposes?

Ans. I should say it was.

64. Is natural gas another hazard of the business?

A. That is a very great hazard in the natural gas fields.

65. Do you think of any other particular hazard to the business?

435 A. Oh there are remote hazards, of course. I saw Chicago burn and we all know how destructive it was to the gas companies there; their property was absolutely ruined, thousands and thousands of service pipes and mains in the streets absolutely ruined. Then there may be an explosion and your holder blow up tonight and ruin you, rendering you absolutely helpless for three or four months, during which you cannot furnish a foot of gas; your purifying house may blow up before morning and put you in a crippled condition; you may have an earthquake that shakes you all to pieces so far as the street mains are concerned; I have seen whole gas districts ruined in California by earthquakes, the pipes all broken up and destroyed; of course, these hazards are remote but they are probable or possible.

66. From your experience and observation in the management and investigation of gas plants, are you able to state what would be a reasonable and fair return to investors, taking into consideration the hazards of the investment on account of new inventions, com-

petitions and the other hazards of the business concerning which you have testified?

Ans. Yes sir.

67. What would be a fair and reasonable return to investers upon the cost of the plant of the complainant, taking into consideration the hazards of the business?

A. I don't know of any manufacturing business that would be willing to work on a less basis than 10 per cent. or more; I should not want to own any gas property that would not return me at least 10 per cent. I want to illustrate that a little bit. For instance you take a company that has a franchise for occupying the streets for the usual period of time, say 30 or 40 years, if for 40 years, I maintain that company is entitled to set aside 2½ per cent. of its structural cost to pay back to its owners at the
436 end of the time the capital they put in, under the assumption that at the end of the time they have no right whatever to go a foot further, or do business a day longer; I am aware that people go on and say, "I will fat up my own pocket and let posterity take care of itself," but in the end where they are dependent on a city for the right to occupy the streets, without that right they cannot do business and in the end they have to face the inevitable and take their medicine, and what the medicine is you can judge by reference to the old St. Louis company; when its franchise run out it had nothing, it could not get any concessions from the city, and they simply told another company that had a right to do business to take their works and do what they pleased with them—give what they could; then, take the case of the Portland, Oregon, works; the city turned around and said, "We will buy your works but will only give you about 40c. on the dollar of what it cost you and you will have to take city bonds;" there was no alternative; they could not do business and had to accept it; then take the Kansas City water works; its franchise run out, the city wanted the water works and said, "We will take it for so much" and it returned 65c. on the dollar to its bondholders. Now, it is a very serious menace to a man that contemplates the outcome of his property at the expiration of his franchise rights, and when the matter is in the hands of a city council—some of the aldermen like to make a record for themselves, and if they can work upon the prejudices of the ignorant voters it don't make any difference who they sacrifice in the case. I regard it as essential to the owners of property to at least earn sufficient money so that year by year they can set enough money aside so when it comes to the time when the destruction of their property is before them and inevitable they can say, "We have got our money we put in; it has been returned to us; we have had the earnings during the time; here is the skeleton and we will get
437 what we can out of it."

68. Assuming that the Peoria Gas & Electric Company commenced the manufacture and delivery of gas to consumers on May 1, 1900; and assuming further, that the character of the plant, the length

and character of its mains and services conformed to the premises heretofore stated, and that the price of gas coal, common labor and stokers were as heretofore given, and the expenses of general operation were fair and reasonable, considering the location of the plant, and that the management and superintendence of the plant was efficient and competent; and assuming further, that said plant had been in operation a sufficient length of time to put in smooth operation the economies of which it was capable, and that it was manufacturing and selling gas at the rate of fifty million cubic feet per year on or about the 1st, of September 1900, what in your opinion would be the actual cost on that date per thousand cubic feet of gas manufactured and delivered to consumers by said company, excluding from your estimate the value of residuals, and excluding also any charge for depreciation, or interest on the investment?

Objected to as incompetent because no foundation has been laid showing that the witness has any knowledge of the cost of materials laid down in the city of Peoria which enter into the manufacture of gas, or the price of manufacturing labor and other labor that enters into the cost of the production of gas in the city of Peoria.

Mr. IRWIN: The question does not ask for the knowledge of the witness as to these things; we are assuming the price of ordinary labor etc.

Defendant further objects to the question because the statement as to the cost of the material does not represent all the cost of material or labor that enters into the manufacture of gas.

The MASTER: The witness may answer subject to the objection.

438 & 439 A. Anticipating this question and knowing it was a matter of some little computation to answer it correctly, I went into the matter in detail yesterday afternoon on the basis of $2.86 per ton for coal in Peoria; $60 and $70 per month for stokers; $1.50 per day for ordinary labor and the usual and customary outlays incident to it following through on those lines and have worked them out in detail and have them here and in order to abbreviate the thing to some extent I will call off from the figures I have made the different items and the cost per thousand which make up the figures—Interrupted——

(The MASTER:)

69. Did you have knowledge of the conditions at the time you made the estimates?

A. I had knowledge of the conditions in a general way; that is to say, we have among all gas companies what is known as a gas directory which circulates only among gas companies and I can turn to that directory and tell you the conditions that exist with any gas company in the United States, and it is based on that information, which the facts brought out here has been shown to be substantially correct, that I have made my figures. Assuming that the average yield was 10.000 feet to the ton, or 5 feet to the pound of coal used,

it would be 28c. a thousand; the labor, stokers, purifying house men, yard men necessary to man up those benches, would cost 14c. per thousand—I am going now as though I was going into the works to run them—Taxes, I estimate the entire property as equal to 10c. per thousand, under the assumption that the taxes on that property is $5000 a year, which would be 10c. per thousand; that item would vary according to what the actual taxes are which I am not aware of, but as a rule gas works run from 8c. to 12c. a thousand; I estimate your boiler fuel at 3c. a thousand; I estimate your fuel for your works under retorts and outside of that at 4c. a thousand; I estimate your purifying material at 1c. a thousand; your re-
440 pairs at works 4c. a thousand—I will state I have no doubt that the repairs are less than that at the present time on account of the works being new, but you will have to renew one of those benches on an average every 12 months and it will cost you $1000 for each bench to renew it and that would be 2½c. per thousand on that one item if there were no other repairs; you have the general repairs throughout your works all the time. I estimate incidental expenses about the works not enumerated, little things which occur incidentally and incessantly, a few cents here and there, a valve leaking which has to be ground in, your collar bars and eccentrics out of order and have to be fixed, your coke barrels being eaten out by fire and have to be fixed and every little incidental expense which is constantly occurring, at 2c. a thousand. Now, if I am correct in this, it will cost you 67c. at the outlet of the holder.

Now, I will take up the distribution. I figure your leakage at 5c. a thousand—unaccounted for gas; I figure your expenses generally—I don't know whether your classification is the same as ours or not—at 1c. a thousand; your office expenses at 4c. a thousand; your distribution labor at 2c. a thousand; repairs to meters at 2c. a thousand; repairs to service pipes at 1c. a thousand; repairs to street mains, renewing pavement wherever you have to disturb it, at 4c. a thousand; officers' salaries at 10c. a thousand; repairs to tools 1c. a thousand; expenses extraordinary, litigation etc., at 5c. a thousand—I think this year you will go over that; solicitors at 2c. a thousand; worthless accounts charged off 1c. a thousand and advertising 1c. a thousand, making the total for distribution 39c. a thousand, to which add the 67c. and your gas costs you $1.06 per thousand. Those are the best figures I can make at Peoria. From that amount should be deducted whatever the value of the residuals are, to which sum depreciation and interest should be added.

70. You say you refer to a gas directory among gas man for information with reference to gas plants and the price and cost
441 of gas—to what directory do you refer?

A. It is known as Brown's Directory, published in Philadelphia.

71. Is that considered among gas men as a reliable directory for information concerning the price of gas, materials and other matters pertaining to the gas business throughout the country?

A. The information it gives is derived directly from the gas companies themselves who fill out blanks and return them to them; I don't think the work is subscribed for by anybody except gas men.

72. Is it among gas men considered a standard and reliable book for such information?

Ans. Oh, absolutely so.

73. Is it in general use by gas manufacturers and producers?

A. I don't think there is a gas company in the United States that don't have a copy of that book.

74. Is it considered a standard authority among the gas fraternity in this country?

Ans. I so consider it.

75. How long has it been considered an authority and a standard work for information on questions pertaining to gas throughout the country?

A. I could not say for how long, but for a good many years.

Cross interrogatories by Mr. HENRY MANSFIELD:

1. When were you asked to give evidence in this case?

A. I was notified by Mr. Lovings, who had a letter from some of the gentlemen present, stating that they would be here to take my testimony on Wednesday in this case, and if I could not testify to please telegraph them; that letter, I think, was received here last Monday morning.

2. Did you see anybody connected with this suit previous to the giving of your testimony here to-day, other than as stated?

A. I saw Mr. Little.

3. Did you have a copy of the questions that have been asked you here to-day left in your possession for perusal?

442 A. No sir.

4. Did you see a copy of any of the questions that have been asked you to-day previous to testifying?

Ans. No sir.

5. Are you acquainted with the conditions that exist in the city of Peoria as to the nature of the soil, the cost of material and labor that might enter into the cost of the construction of a plant similar to the plant erected by the Peoria Gas & Electric Co.?

A. Only in a general way as I have stated.

6. Then you base your estimate as to the cost of the plant erected by the Peoria Gas & Electric Co., merely upon your general knowledge of the cost of labor and materials which entered into the construction of the plant, do you?

A. In estimating the cost of the plant, as I have stated in my testimony, I estimated it from the average of $25.000 per bench, which in my experience is a very close estimate of the actual cost that will be incurred in any place in the United States where freights are not excessive. For instance, I would not make that estimate in Portland, Ore., or in Tacoma, Seattle or San Francisco, because freights are

excessive across the continent, but anywhere within the central States here; of course, I assume that the bench work came from St. Louis, inasmuch as we put in 14 of those benches last year, and inasmuch as we are further away from there than Peoria is, I don't assume they cost any more in Peoria than they would here but about the same.

7. Do you know what the cost of the lumber was that entered into the construction of the plant of the Peoria Gas & Electric Co. in the city of Peoria—in its buildings, etc.?

Ans. No sir.

8. Do you know the cost of the brick, mortar and cement?

A. No sir.

9. And material generally that entered into the buildings there of the plant?

443 A. No sir only in a general way; an approximate is all I could give and some things I might over estimate and some I might under estimate.

10. In basing your estimates of the cost of the organization of a company, did you take into consideration the honesty of city councils in so doing or did you put an item in there for the expense of getting the franchise through the city council?

A. Of course, I would not for a moment say that the city council of Peoria was composed of anything but strictly honest men; I assume, however, they all smoke and some of them drink; I also assume they like to go to theatres and like to go riding and it all costs money.

11. How much of that 5½ per cent. did you estimate it would cost to take the city council around and treat them to cigars, whiskey and theatre tickets?

A. Well, I don't think I particularized those items at all; I have had the organization papers of a company drawn up and the legal work attended to on a charge of $500, and I have been charged for less work with another company $5000.

12. Was this an average estimate based on the figures—

A. (Interrupting.) It was such an estimate as I would make if I contemplated making an investment to construct that property.

(The MASTER:)

13. Was it an estimate based upon your experience in matters of this kind?

Ans. Yes sir.

(Mr. MANSFIELD:)

14. You are not acquainted with the character of the soil in the city of Peoria, are you?

A. No sir, I am not.

15. From your knowledge as a gas expert, what in your opinion would be the cost of coal gas in the holder of the Peoria Gas &

444 Electric Co., assuming they manufacture five million cubic feet of gas per month, taking into consideration also the fact, that the bi-products of tar, ammonia and coke are extracted and sold, tar for 5 cents a gallon, ammonia for 8 cents a pound and the coke at an average price of $3.25 per ton?

Objected to as incompetent, not cross examination, and no basis presented on direct examination upon which to make any such an assumption.

The MASTER: I think, Mr. Mansfield, your estimate of the gas produced is higher than has been estimated; fifty millions per year has been the highest estimate, but the witness may answer subject to the objection?

A. I should want some time to figure that out before I could answer it; in making up my estimate of expenses, as I have just testified, you will see there is a large item of them of what might be called fixed expenses; I would like to say also that there are months in the year, with a gas company of the size of the complainant company, when I venture to say they do not make cost—during the summer months, the hot months they actually lose money; in order to arrive at the cost of gas, you have to take the aggregate of the 12 months' consumption, or else you have to take each month separately on a given amount of consumption and figure it out on that basis. For instance, the fixed charged would be infinitely less per thousand feet, would be just one half less practically, on 2½ millions a month as it would be on five millions a month; it changes the figures all the way through and I could not answer your question consistently without computing it and figuring it up. If you will give me a couple of hours, I will work it out for you.

16. I will not require you to do that, Mr. Brown.

A. I would be glad to answer the question off hand if I could intelligently.

445 17. Assuming that the Peoria Gas & Electric Co. manufactures 5,187,200 cubic feet of gas, and that the cost of gas coal was $1460.92, the cost of bench fuel $295.26, the cost of boiler fuel $177.47, the cost of manufacturing supplies $20.97, the cost of purification supplies $47.13, the cost of enrichers $23.85, and the cost of retort repairs $30.71, would it in your opinion as a gas expert be able to put that gas in its holder at a total net cost of 24 74/100 cents per thousand cubic feet?

Objected to as not cross examination and simply a matter of figures that the witness is not expected or bound to figure out for counsel. In other words, this is not a mathematical school to work out proolems.

A. It is just a mathematical calculation and if the figures work out 24 cents, that would be all there is of it, but the items given do not cover the cost of manufacturing gas and putting it in the holder;

my computation of the cost has been based on a run of fifty million cubic feet in 12 months.

18. What would be the other items of cost that would enter into the cost of the production of that gas in the holder to the company other than those I mentioned?

A. I have given them here; based on coal at $2.80 per ton, averaging 5 feet to the pound, that coal would cost 28 cents a thousand alone; I estimate the labor at the works at 14 cents; taxes at 10 cents; boiler fuel at 3 cents; fuel under retorts 4 cents; purifying material 1 cent; insurance 1 cent; repairs to works 4 cents, etc., making a total of 67 cents per thousand; that is based on a 12 months' run producing fifty million feet; you cannot fix your charges to suit each month, nor you cannot reduce your labor. For instance as an illustration; tonight is a dark night, it will shut in dark perhaps an hour earlier than usual and we will prob-
446 ably send out from two thousand to two hundred and fifty thousand feet more gas tonight than we will tomorrow night if tomorrow is a bright day; we have, however, to be manned up so we can make it. In other words, we always have to be manned up for the maximum consumption and not for the minimum; there is no two months in the year that our cost price is the same.

(The Master:)

19. In your illustration of the short, dark days, do I understand you to mean by that that this additional 250,000 cubic feet of gas you send out costs you less to produce it than the cost would be of the first 250,000 feet?

A. Most assuredly; suppose we had to make 250,000 feet of gas more today; it would cost us simply the price of the raw material less the value of the residuals that went into the gas; it would not be one cent more for labor, distribution, taxes or for any of the expenses of the company with the exception of the value of the coal less the value of the coke, ammonia and tar; you see, therefore, the making of the additional 250,000 feet would amount to a mere bagatelle; there would be 25 tons of coal used, perhaps, and deducting from that 10 pounds of coke, 10 gallons of tar, the balance would be exactly what the 250,000 feet cost you; it would not cost you 10 cents a thousand; but you know a gas plant must be manned up for its maximum consumption and not for its minimum consumption. For instance, we have 5036 street lamps which we are lighting on a moonlight schedule; they will burn 4 feet an hour; those lamps burn 20,000 feet an hour and when they burn all night they burn approximately 275,000 feet a night this week; next week they will be off because the moon will be up; we stand ready to make that additional 250,000 feet and we have to incur the expense of it with the exception of the value of the raw material.

447 (The Master:)

20. In other words, your fixed charges are there whether you sell the gas or not all the time?

A. The fixed charges of our company are more than the absolute cost of the manufacture and you cannot avoid it; we have to have a street force to look after the mains, we have to have a shop force to look after frost cases, meters and complaints, we have to have a force at the works to look after the manufacture, we have to have a force of lamp lighters consisting of 40 men to look after that who are under pay, no matter whether it is light or great consumption; our leakage is practically the same—take the item of leakage on 50,000,000 cubic feet; you figure that at a cost of 5 cents per thousand; suppose you increase your output to a hundred million cubic feet per year, then the item of leakage would be but 2½ cents a thousand; the mains are the same, they are filled with gas all the time under pressure, and they would leak no more passing a hundred million feet than they would fifty million, but it reduces your cost on that item 2½ cents a thousand; increase your output to two hundred and fifty million or three hundred million and you get that item down so it is very small.

(The MASTER:)

21. Do all these conditions prevail in proportion to all the plants you have been connected with?

A. Yes, it is part of the business; we hear about Cleveland, Toledo and Cincinnati—by the way I had a letter from Mr. Hinkle about some matters a few days ago from Cincinnati—he is a very warm friend of mine, and they are selling gas very cheap; Mr. Fabin, I understand, is so situated as to be able to utilize some natural gas and, of course, turning that in with a valve, carburet it a little and you get cheap gas; take it in Cleveland where it is said they manufacture and sell gas at a little less than a dollar a thousand. What are the facts in this case? When they had a
448 suit in that city—the president of the company was here to see me; they are a close corporation earning money at high prices, they declare reasonable dividends and put the rest in the extension of the plant and charge it to expense account, don't capitalize it at all, they have low capitalization—and the judge ruled they elected to put it there and they could not afterwards capitalize it. They are selling gas at a low price but considering the fact they are selling 1250,000,000 feet per year in Cleveland—what are the peculiar conditions surrounding Cleveland? It is the largest manufacturer of edged tools situated in the United States and edged tools require to be tempered in oil, oil has to be heated up with gas in order to have it absolutely uniform that the temper of these fine tools may be made all right, and they have a large consumption by reason of their location and the conditions of the community; they are using 1250,000,000 feet per year which is 25 times more than the company in question here sells; you take and reduce the fixed charges of the Peoria Gas & Electric Co. by 25 times and you can have cheap gas in Peoria; the trouble is you don't sell enough there

to entitle you to cheap gas; you cut your own throats by letting in another company.

(Mr. MANSFIELD:)

22. What if there is a combination between the two companies?

Objected to as immaterial, not cross examination.

A. I answer that by saying you have two properties either one of them equal to supplying the city of Peoria and you have two capitals invested there and you have to pay two dividends on two capitals as long as you elected to divide it.

23. What in your opinion as a gas expert would be the cost of 4,383,100 cubic feet of gas in the holder of the Peoria Gas & Electric Co. where the total cost of material was $1740.69, and the
449 total labor which entered into the manufacture of the gas was $752.84, excluding therefrom the value of residuals?

Objected to because it is simply a mathematical problem and not one for an expert and not cross examination on any matters concerning which the witness was interrogated about and the witness is not bound to work out mathematical problems in this examination.

A. That is a question of mathematical calculation and the same answer I made to a previous question would apply to this.

24. What in your opinion would be the value of the coke obtained from the manufacture of 4,383,100 cubic feet of gas by the Peoria Gas & Electric Co. where the cost of the gas coal entering into the manufacture of the gas was $1220.03 the gas coal as laid down in the city of Peoria costing $2.80 per ton?

Objected to same grounds as before.

A. What is the price of coke? I can answer the question in another way perhaps by per cent.

25. What would be the percentage of coke obtained from the manufacture of that amount of gas per ton of coal?

A. I will answer that by saying that after deducting what the works need to maintain its own fires under its benches and boilers, they should have about 800 pounds of coke for sale from every 2000 pounds of coal carbonized.

26. How much coke is used for bench fuel—how much coke do you assume is used for bench fuel in the manufacture of gas in the city of Peoria—the percentage?

A. The percentage that is used—that involves an explanation. Every gas works that depends on coal gas must have benches fired up for a capacity 25 per cent. in excess of its daily consumption, to take care of dark and cloudy days, extra heavy consumption Saturday nights and any contingency that might arise which would
450 be liable to put them out of gas. Now, the amount of coke that a bench would consume in per cent. would depend altogether upon the amount of coal going into the charges. For in-

stance, if the output from your holder was such that you could charge oftener than 6 hours the per centage of coke used would be a great deal greater than it would if you could charge 4 hours; in one instance you get 4 charges in 24 hours and in the other you get 6 charges in 24 hours; whether you get in 4 or 6 charges depends on the state of your holder, whether you have room to take care of the gas; to take up this discrepancy various works pursue various policies; the average charge for a bench of 9's would be 3600 pounds of coal, 400 pounds to a retort; that would be the average charge; if your holder was full and would not take the gas, you might cut that down to 300 pounds and if you were compelled to cut your charge down to 300 pounds the coke used would be 25 per cent. less than if you run 400 pounds; it is a question of mathematical calculation; so in practice we observe this rule, we take the average per month, or average per year of coke saved per pound or ton of coal and, as I say, after deducting for the use of our own fires in the works we average about 800 pounds for sale per ton of coal month in and month out and this variation is made up by the causes which I have just enumerated.

27. What is the average per cent. of coke used in the manufacture of gas then on the same basis?

A. I will answer that by starting from a different standpoint and will try to make it more intelligible; a ton of first-class Youghiogheny coal will give you—well I will say a ton of second pool of Youghiogheny coal will give you on the average abou 1320 pounds of coke—the total production from 2000 pounds—the difference between that and 2000 pounds weight is made up in gasses, tar
451 etc. taken out; of that 1320 pounds we estimate to take on the average about 400 pounds for our benches and the balance is used up under the boilers and wasted in breeze and various ways so our net sales average us about 400 pounds.

28. What per cent. of tar is obtained from the burning of a ton of coal?

A. If you were to put a ton of coal into your retorts and actually catch all the tar that would come out you would have about 12 gallons under proper distillation, but in practice you cannot get but about 10 gallons, the balance of it is made up of thick stuff which settles at the bottom of the well and gradually fills it up until you have to clean it out and throw it away or burn it up; we average to sell 10 gallons of tar out of every 2000 pounds of coal we carbonize.

29. What would be the per cent. of ammonia obtained from the distillation of one ton of coal?

A. The gas people figure that also in a different way; ammonia is a quantity that you reduce as your necessities require you to. For instance, you may go along with what we call weak liquor, 4 or 5 ounce liquor and let it accumulate in the receptacle where we accumulate this weak liquor for 4 or 5 or 6 months; we don't take into calculation the value of that ammonia until we concentrate it

down to 80 ounce liquor, that is, about 15 per cent. ammonia and when we get it down to that we sell it at once, ship it to the Michigan ammonia works and take the proceeds, and at the end of the year we take the total amount of ammonia, divide it into the tons of coal we have carbonized during the year and estimate its value per ton of coal; that is the way we arrive at our figures and those figures give us about 18 cents' worth of ammonia in a ton of coal.

(The MASTER:)

452 30. It also gives you the pounds of ammonia, does it not?

A. Yes sir, it is then a question of chemical figuring to get it into pounds. For instance, 80 ounce liquor is what is known as 15 per cent. of free ammonia and then it is crystal-ized and they will not give you anything for the crystals; they deduct that; that is a question I have fought over for the last 5 or 6 years with the Michigan ammonia works; we shipped them a car of ammonia, took its strength, calculated its value and were unable to agree as to the value of the ammonia; we finally took samples down to our chemist, we maintain a laboratory here and a chemist all the time at work, but even then we could not agree as to the strength of the ammonia; we finally agreed to leave it to Professor Love of New York and sent him samples; the Michigan ammonia works, however, said the crystal-ized ammonia was of no use to them, that they wanted the free ammonia; the question of the value of ammonia has been a live subject with us.

(Mr. MANSFIELD:)

31. You stated on direct examination that there was a commercial department connected with the operation of a modern gas plant with the idea of increasing the gas consumption?

A. Yes sir.

32. What does that commercial department consist of?

A. It consists in the sale of gas stoves, the soliciting of consumers, the sale of Welsbach burners, the setting up of gas stoves, the sale and setting up of all gas burning appliances of various kinds and descriptions and the general pushing of the business to secure consumption; as I have before stated the gas business has got down to a point where it is like any other business and we have to push for business all the time or else drift into the rear; we cannot sit and wait for business, we have to go after it.

33. Would you consider a gas company that had eliminated
453 from its commercial department the Welsbach lamp department a company that was forcing and attempting to increase its business or not?

Objected to as not cross examination.

A. I consider that a Welsbach department is an absolute necessity to increase its business.

34. Would you consider that the risk attached to electric plants

in a city would be a risk that should be taken into consideration where a gas company had also an electric branch connected with its business?

A. I think that an electric branch to a gas business is like the fifth wheel to a coach; I don't believe it belongs to the gas business at all and I will tell you why—I don't know whether I am hitting my friends or not but it don't make any difference—the business of a gas company is to sell gas and sell all it can; it is not its business to monopolize any particular method of lighting, whenever it acquires an electric plant it is for the purpose of monopolizing the lighting system and I hold as a principle that is wrong; I have never yet seen in my experience a gas company that has added an electric annex to its business but what its gas business has suffered. To illustrate what I say, our friends in St. Paul put in an electric annex for the purpose of running an opposition to themselves, instead of spending the money and energy to develope their gas business they spent it in an effort to corner the people, monopolize the business and the result is while at the time they took on their electrical annex they were selling more gas than we were, today we are selling over 150,000,000 feet a year more than they are and we have not touched the electric business at all. When electricity first came in, I spent a good deal of time investigating it, and the result of my investigation was that it did not contain the elements of success within itself, it had
454 not the element of money making in itself, it had not the element of competition as against the other light in itself, it was a special light adapted to special purposes and had its own field and would thrive in that field if it did not extend itself too far. Our company when electricity first came out wanted to stand by gas if it was all right but we did not want to be cut off altogether if it was going to be superceded by something else but after an investigation covering a good many months and very extensive traveling from the Pacific coast to the other extreme of the continent I came back and made my report that we did not want to have anything to do with electricity; that being the case we could not object to anybody else having all they wanted to do with it, but we never put a cent into electricity in any way, shape or form, and I will further state that if I had been in a foreign country and only had our daily or monthly reports before me and not knowing whether we were in electricity or not, I would not have known there was any in the town, as we were going right along as fast as we ought to.

35. Does the amount of gas manufactured increase or decrease the price or cost of the gas?

A. Decreases it largely.

DAVID DOUGLAS, called on behalf of complainant, being first duly sworn, testified as follows:

Direct interrogatories by Mr. ABBOTT:

1. State your name, age and residence.
A. David Douglas; 56; Eau Claire, Wis.
2. What business are you now engaged in?
Ans. Gas business.
3. What position do you hold?
A. President and general manager of the Eau Claire Gas
455 Light Company.
4. Are you familiar with the business of the manufacture and sale of gas?
Ans. Yes sir.
5. State what if any particular training you have had in the schools with reference to preparation for that business?
A. When I was a child, my father was chief engineer of a large gas company in London, England; I was educated with the intention of following the profession of a gas engineer; I graduated at the university of St. Andrews in Scotland, my education having been specially designed in the engineering line.
6. What practical experience have you had since that time in connection with the manufacture and sale of gas?
A. I was assistant engineer to the Phœnix Gas Company in London, England, for four years; I was assistant engineer of the New Castle and Gateshead Gas Company, a very large city; I had the entire management of the Chesterfield Gas & Water Works in Devonshire, England; I was lessee and part owner of the Aldershot Gas Works of Waverly, England, and was associated with a number in the construction of important extensions at Portsmouth naval dock in England; I also designed and constructed a large number of small works as well as the additions necesarily belonging to these larger operations; I left England and then had experience in the management of the chemical works and gas works at Rockville, Canada; I constructed and afterwards operated gas works at Sarnis, Canada; from there I went to Savannah, Ga., and was president and general manager of the combined business of gas there with the United Gas Improvement Company; while in the employ of the United Gas Improvement Company, I was called upon to assist in the construction and management of various gas works in other cities in this country
and made *made* so-called examinations of the manufacture of
456 fuel gas especially with reference to the Welsbach burner
when it was first brought out; from there I came to Minneapolis, where for four years I was general superintendent of the Minneapolis Gas Light Co. and in the year 1894 I purchased an interest in the Eau Claire Gas Light Company where I have remained until now. During the last seven years I have re-constructed the gas works at Red Wing, Minn., and have been called in to examine several plants of more or less importance and claim now to be in the busi-

ness not only as manager of the gas works at Eau Claire, but consider myself in the business of advising in the construction and undertaking the construction of gas works and other kinds of undertakings. I am also a fellow of the Chemical Society of London, England. I think roughly speaking that is my record.

7. What are the different processes in use throughout the United States for the manufacture of gas to be sold through a general distributing system laid in the streets for illuminating or fuel purposes?

A. There are three generally known; one is practically obsolete, the manufacture of oil gas diluted with air; it was limited as a rule to very small towns and villages, but there are quite a few of those plants around in this northern country yet. The other is carburetted water gas and coal gas. Coal gas, however, is the parent gas of the gas business.

8. Are you familiar with the processes involved in both the manufacture of water gas and coal gas?

Ans. I am.

9. Describe briefly but in detail the modern method and apparatus for the manufacture of coal gas that is now in general use.

A. The manufacture of coal gas is nothing more or less than the destructive distillation of coal in a retort and a separation of the tar and water by condensation and a subsequent purification
457 of the gas from ammonia by scrubbing or washing and the absorption of the sulphur and other deleterious gasses in purifyers.

10. Describe briefly the process of the manufacture of water gas?

A. The manufacture of water gas is the decomposition of steam in the presence of highly incandescent carbon; that carbon may be made in the form of anthrocite coal, coke or charcoal; that decomposes and produces what is known as blue water gas which is a mixture of hydorgen gas and carbonic acid; that gas has no illuminating quality, and therefore, oil is added above the blue water gas generator and the oil is decomposed, broken up and mixed with the blue gas and that is known as carburetted water gas; the carburetted water gas after being obtained is treated practically as coal gas is treated; it is condensed so as to remove the tar and water, passed through scrubbers and purifyers and finally sent to the gas holder practically with the same apparatus and same method.

11. What if any changes have taken place in the last 25 years in the type of benches and number of retorts which are in use in manufacturing coal gas and what are the reasons for such changes?

A. The benches are made larger with a larger number of retorts of larger size; the style of heating has changed from what was known as brick firing benches to recuperative firing benches.

12. Has there been any change in the material of which the retorts were made?

A. Originally, retorts were made of cast iron, now they are made altogether of fire clay but that is further back than 25 years.

13. When was that change made?

A. It was 40 years ago; I was 16 years of age at the time and am now 56; and further back than that they were being used, but they were exclusively in use 40 years ago.

458 14. What changes or advances has there been in the type of purifyers and the purifying materials?

A. The old style of purification was lime purification, now oxide of iron is practically the sole purifying agent; the boxes are made deeper and the purifyers instead of working all in one direction, are made reversible so as to be able to get more efficient use of the purifying material; there has always been the revivification of the inside of the box itself by a slight addition of air; of course, in the making of the articles themselves they have been very much improved in design and are made better than they used to be made, having dumping doors and better facilities for filling and emptying.

15. What changes or advances has there been in the recovery of the bi-products?

A. The tar was always obtained, all of it as much as now, because there was none ever lost; it was all condensed; the bi-products consisted as they do now practically only of tar, coke and ammonia, but the new style of retort bench uses less fuel for the same amount of ammonia than the old style bench, and therefore, there has been a considerable larger amount of coke sent to the yard for sale than there was under the old style; there has been several devices, of one kind and another, devised for the removal of the ammonia, but I don't know that any of them have improved very much upon the old style; there has been some little change in regard to the scrubbers and saving of ammonia, but the ammonia is not a very valuable product, I mean, taken per ton of coal it is not of as great relative value as the other.

16. Look at the plat now shown you marked Exhibit "1" and in evidence in this case, and assuming it to be a plan of the gas plant of the Peoria Gas & Electric Co. at Peoria, Ill.; further as-

459 suming that on September 1, 1900, the population of the city of Peoria and the territory tributary thereto, was 65,000 inhabitants, that said city of Peoria was located upon the westerly bank of the Illinois river, upon ground gradually sloping westerly for a distance of about 1½ miles, and extending along the Illinois river for a distance of 4 or 4½ miles, and that the plant of the Peoria Gas & Electric Company was then located at about the center thereof on the bank of the river; assuming also, that on September 1, 1900, there was in the city of Peoria another gas plant owned by an independent company, which plant had been in operation for about 40 years and had a capacity of about 500,000 cubic feet of gas per day; and assuming further that the plant of the Peoria Gas & Electric Co. was constructed during the year prior to September 1, 1900, what is your opinion of the plant of the Peoria Gas & Electric Co. in the city of Peoria, with respect to its fitness in size, char-

acter and equipment for the manufacture and sale of gas in said city, taking into consideration the element of future growth, etc.

A. It is well designed and a good plant; it is located approximately in the center of the city and there can be no doubt that it is well erected.

17. State whether or not in your opinion judging from the plat marked Exhibit "1" it is the plan of a thoroughly modern and up to date coal gas plant?

Ans. Yes sir it is.

18. Assuming that at the time of the construction of the plant of the Peoria Gas & Electric Co., the population of the city of Peoria and the territory tributory to said plant was about 65,000 inhabitants; assuming also that the wages of ordinary labor were $1.50 per day, that at the same time Youghiogheny coal could be purchased and delivered at the works at $2.80 per ton; assuming further that at the same time there was a local market for coke
460 at an average price of $3.25 per ton; that the tar bi-product could be sold at 5 cents per gallon; that the ammonia bi-product could be sold at 8 cents per pound, that cannel coal for enriching could be bought for $3.00 per ton, and that gas oil for making water gas could be bought at 3¾ cents per gallon, and that coke for water gas making could be bought for $4.00 per ton, and that the company was not bound by any requirement as to candle power of gas to be furnished, would it have been more expedient, in your opinion, to have erected a coal gas plant or a water gas plant, and why?

A. I would recommend the erection of a coal gas plant for the reason that the production of coal gas would be cheaper than that of water gas and that the coal gas produced would be as valuable both for lighting and all heating purposes as the water gas which would be produced at a higher cost.

19. Are you familiar with the cost on the open market during the years 1899 and 1900, of the various items of machinery, apparatus, materials, equipment and labor entering into the construction and operation of a coal gas plant of the capacity and character of the plant of the Peoria Gas & Electric Co., as shown on Exhibit "1"?

A. I always keep myself fairly well posted upon the market values of all goods used by gas companies, whether in the construction or operation of their works.

20. From your examination of this plat, from your knowledge of the cost of construction of similar plants, and your knowledge of the cost in the open market, during the years 1899 and 1900, of the various items of machinery, materials, apparatus, equipment and labor entering into the construction and operation of a coal gas plant of the capacity and character of the plant of the Peoria
461 Gas & Electric Co., assuming that it has a capacity of 500,000 cubic feet per day, are you able to state what would be the reasonable cost price of the plant of the Peoria Gas & Electric Co.,

as shown on Exhibit "1," assuming that said plant was constructed during the years 1899 and 1900, and that the various items of machinery, materials, apparatus, equipment and labor were purchased in the open market?

Objected to as incompetent and for the reason the witness has not shown any knowledge as to the wages paid at that time in the city of Peoria, or the cost of materials, as laid down in said city, which enter into the construction of the plant.

A. I should say about $180,000.

21. Assuming that on September 1, 1900, the Peoria Gas & Electric Co. had mains and services laid in and through the streets and alleys of the city of Peoria for the distribution of gas as follows, to-wit:

Mains.

1758 feet of 16" main of which 160 feet is under pavement.
20768 feet of 12" main of which 11225 feet is under pavement.
3462 feet of 10" main of which 58 feet is under pavement.
20224 feet of 8" main of which 13234 feet is under pavement.
12874 feet of 6" main of which 5474 feet is under pavement.
80852 feet of 4" main of which 9792 feet is under pavement.
260 feet of 2" main, making a total of 140223 feet of main of which 39943 feet is under pavement.

Services.

3	3"	services, total length	872 feet
2	2½"	services, total length	374 feet
652	2"	services, total length	37244 feet
1503	1¼"	services, total length	111369 feet
266	1"	services, total length	29393 feet
		Total of 2426 services, total length	179252 feet

462 and assuming that the cost of ordinary labor during the year preceding September 1, 1900, was $1.50 per day, please give an estimate of the fair and reasonable cost of laying the mains of the Peoria Gas & Electric Co. and the services of said company, including labor, materials, cost of repaving streets, and all other expenses incident to laying said mains ready for use?

Objected to as incompetent and immaterial and because the witness has not shown he knows what the cost of material is laid down in the city of Peoria nor is he shown to have any knowledge of the character of the soil in which the mains and services are laid?

A. I am not able to answer a question of that kind at this time with perfect exactness for I have not myself gone through all the detailed calculation of those figures, but experience enables me to

judge of a set of mains of this character under ordinary conditions and ordinary soil. How many miles of main are there?

22. About 26½ miles.

A. I would roughly estimate that those mains cost about $4,000. per mile; the cost of those mains would vary from $2200. or $2300. per mile up; the cost of those mains apart from paving would be about from $100000 to $105,000. aside from the cost of removing and replacing pavement. Now, I don't know the nature of the paving and therefore could not very well testify as to the cost of its removal.

23. Assuming that a portion of these mains are laid under asphalt pavement on a 6 inch concrete base and that other portions of it, that are under pavement, are under a brick pavement with a 6 inch concrete base, what if you know would be the added cost per foot for such portions of the mains as are under either of said pavements?

463 Objected to unless the witness knows how much of the mains were laid under asphalt and how much under brick.

A. The relaying of asphalt would be about $1.25 per foot run of the trench; the relaying of the brick I should not estimate at over 35 cents per foot run of the trench, because the brick, all of it that was taken up, or practically all of it, would go back in and be used over again, whereas the asphalt would be practically destroyed and would have to be all melted up.

24. Assuming the premises heretofore given in regard to the plant and system of the Peoria Gas & Electric Co. and that the said plant and system were constructed during the year prior to September 1, 1900, what, in your opinion, would be the fair and reasonable cost of equipping and organizing the office of the Peoria Gas & Electric Co. for operating said plant and conducting its business, including the expense of office equipment, books, etc.?

A. I don't know; it all depends upon how the offices are fitted up, whether with pine or mahogany furniture.

25. Assuming that on September 1, 1900, the Peoria Gas & Electric Co. was the owner of 1758 meters purchased new during the year preceding September 1, 1900, what, in your opinion, would be the fair and reasonable cost of said meters so purchased, including the cost of connections and settings?

Objected to as incompetent for the reason the witness has not shown himself to be familiar with the cost of labor of the kind and character to set meters in the city of Peoria.

A. The larger number of meters would be 5-light presumably and 10 and 20; the average cost of the meters would be about $8.50 or $9.00 and the cost of setting would bring up the amount to about $12.00 per meter; I mean the cock, lead connections, the
464 meter shelf and the work incidental to making and placing them; many of those meters have to be taken out singly for

different people and it is not like going along in bunches, but the approximate cost of a meter set under such conditions to the gas company would be about $12.00.

26. In your estimates heretofore given as to the cost of the plant, mains, and services of the Peoria Gas & Electric Co., have you included in your estimate any amount for the legal organization of the company, the equipment and organization of its business force, cost of advertising, solicitors and the general expense of putting the plant into operation?

Ans. I have not.

27. Are expenses of the kind mentioned in the last interrogatory expenses properly incident to putting such a plant into operation?

Ans. Necessarily so.

28. Assuming the premises heretofore given, and also having reference to plat marked Exhibit "1," and the premises given with reference to the location, character and size of the city of Peoria, and assuming that the plant of the Peoria Gas & Electric Co. was put in operation for the manufacture and sale of gas to consumers on May 1, 1900, and assuming further that the cost of the real estate upon which said manufacturing plant is located was $51,500., and that the cost of the legal organization of the company, the equipment and organization of its business force, cost of advertising, solicitors, etc. and the general expense of putting said plant into operation was $42,000. and that on September 4, 1900, after four months of operation, it was manufacturing and selling gas to consumers at the rate of fifty million cubic feet per annum, what in your opinion, was the fair market value on September 4, 1900, of the manufacturing plant, mains, services, meters, office equipment, books, service tools and equipment of every kind which
465 might properly be considered a necessary part of its plant, assuming in answering this question, that said plant so existing and in operation was then sought to be purchased by parties having the need of such plant, and having the right to operate the same, and excluding from your estimate of market value any value which might lie in the license or franchise of the company. In answering this question you need not include the purchase of material to be manufactured into gas?

Objected to as incompetent and also because the witness has not shown he knows anything about the cost of material or labor that went into the construction of the building situated or located on the ground of complainant company; and for the further reason that the question assumes facts not proven in this case.

A. According to my estimate, it amounts to about $440,000.

29. How would that market value of $440,000 compare with the actual cost of the plant in your opinion?

A. That is the cost which I have given.

30. Then, if I understand you correctly, the estimate you have just given is as to the cost of the plant complete, assuming the

various premises which have been given you. If such is the meaning of your answer, please state how, in your opinion, the fair market value of the plant corresponds to the figures you have given as your opinion of the cost?

Objected to as incompetent and also because the witness has not shown that he knows anything about the value of the materials that went into the construction of the buildings upon the premises of the Peoria Gas & Electric Co., nor has he shown that he has any knowledge of the cost of the labor that entered into the con-
466 struction of the building and the manufacturing plant?

A. I would say in answer to that question that it was largely covered by the price which I have already given; it is a new plant well located in a good city; it has a prospect of doing a large business and earning money, and therefore, as a market proposition, the plant should be certainly worth all it has cost if not more.

31. Assuming that the Peoria Gas & Electric Co. commenced the actual manufacture and delivery of gas to consumers about May 1, 1900; and assuming further that the character of the plant and the lengths and character of its mains and services conform to the premises heretofore stated, that the cost of Youghiogheny gas coal at the works of the company was $2.80 per ton, that the wages of labor were $1.50 per day for ordinary labor, $65.00 per month for general stokers and $70.00 per month for the head stoker; assuming further that the purchase of materials in general, and the expenses of general operation were fair and reasonable, considering the location of the plant, and that the management and superintendence of the plant was efficient and competent; and assuming further that said plant had been in operation a sufficient length of time to put into smooth operation the economies of which it was capable, and that it was manufacturing and selling gas at the rate of fifty million cubic feet per year, what, in your opinion, would be the actual cost per thousand cubic feet of the gas manufactured and delivered to consumers by said company, excluding from your estimate the value of residuals and excluding also any charge for depreciation or interest on the investment?

A. I would say that the average price of labor from Wisconsin down to Georgia is approximately the wages mentioned in the question, viz: $1.50 for laborers and $60.00 for ordinary stokers—
467 $70.00 in towns of 50,000 and 100,000 people is a fair average price. The conditions governing the management of the gas works in Peoria are not, so far as I know or can imagine, essentially different from the management in any other town, therefore, the cost of the production of gas, excepting so far as the cost of coal and the price obtained for the bi-products may vary, is practically the same in most cities of like character and like output. Under these conditions coal produces 10,000 feet of gas per ton, the cost per ton being 28 cents per thousand feet. The cost of manufacturing the

gas, including the stokers, laborers, purification and repair of works, may be lumped together—it is very hard to separate them because men work one into the other and when you begin to classify you only land in trouble—it is approximately 25 cents per thousand feet. The cost of distributing gas covers a great many things; it covers repairs of mains and services, meters, attention to customers and such things that happen to transpire, and is generally found to cost about 25 cents per thousand feet. An ordinary estimate for taxation is generally taken at about 10 cents per thousand feet; without knowing what the complainant company is taxed at, I should add 10 cents per thousand feet for taxation. For office salaries and general management expenses 10 cents per thousand feet. Now there is the question of leakage; you don't sell all the gas you make, and I should figure that leakage account—assuming the mains to be new and services new—at about 8 cents per thousand, making the total cost of gas delivered, exclusive of receipts from residuals, $1.01 per thousand.

32. Does not depreciation enter into it somewhat?

A. Yes sir, I was simply speaking of the manufacturing part; I was not touching depreciation at all.

33. What is the candle power of coal gas most satisfactory
468 to the consumer?

A. Ordinary bituminous coal gas is generally assumed to be 16 candle power but 18 candle power is undoubtedly a very satisfactory candle power.

34. What objection, if any, is there to coal gas of over 18 candle power?

A. When coal gas is enriched by means of oil above 18 candle power, the naked flame especially has a tendency to smoke, it does not burn well, it has a tendency to smoke and generate fumes and vapor.

35. What candle power of water gas is equivalent to 18 candle power coal gas?

Objected to as immaterial.

A. About 25 candle power.

36. Are you familiar with the elements and forces, if any, which contribute to the depreciation of a gas plant and its pipes and how and to what extent they act?

Ans. I am.

37. What are those elements and forces and how do they act?

A. In regard to the buildings the fumes in a gas works are largely charged with ammonia and sulphur compounds, both of which are very injurious to all kinds of metal work, and therefore, get in their work of destruction upon any part of the metal work very quickly; in gas works and buildings, however, as the buildings are as a rule kept plain it is only a limited loss and the brick and stone are not seriously effected. With regard to retort benches they are subjected to intense and long continued heat which is very destructive.

I want to say that the retorts themselves in my opinion ordinarily—the renewal of retorts—would not in my opinion be considered a depreciation charge—interrupted.

38. Let me ask you if you distinguish between charges for
469 repairs and charges for depreciation, if so, please indicate in a general way that distinction?

A. I do very distinctly; I draw a line between so called repairs and depreciation; the renewal of retorts—the retorts themselves, not the arches, not the benches, not the hydraulic main, but the retorts themselves that are worn out by actual use is naturally a repair; if a pipe gets accidentally broken and is mended that is a repair; if a sewer excavation is made and a main settles and is put back again into place that would be a repair; if a meter gets accidentally damaged, punctured, it is a repair. Depreciation on the contrary, is a gradual loss of value which calls at some future date for the absolute renewal of the article itself and a fund must be provided for that renewal. The benches of retorts, large heavy fire brick structures, are continuously undergoing a process of disintegration every year and finally have to be absolutely renewed, which is depreciation. Your engines, boilers and such like may be repaired from time to time, but there comes a time when they must be renewed and that should come from the depreciation fund. So with regard to all the apparatus. This depreciation idea applies very forcibly to street mains and services; they go right along year after year calling for no particular attention except occasional repairs at places where damage is done, but ultimately there comes the end of the life of those mains and services when they must be renewed and that must be provided for from a depreciation fund. There is where I draw the distinctive line between so-called repairs and depreciation.

39. Did you state in answer to my previous question all of the elements and forces which contribute to that depreciation?

A. No, I did not.

40. Please state such further elements and forces?

470 A. The retort benches are subjected to intense and constant heat, I believe I have stated that, and necessarily have a lifetime at the end of which period they must be renewed absolutely; the boilers, exhauster, pumps, of which there are several, always in a gas works of that size, are wearing out from their own movement and must be renewed ultimately from time to time; the gas holder is made of thin sheets of iron or steel, is perishable and the time must ultimately come for the renewal of the gas holder; with regard to the mains, there is a rusting process continually going on on all iron work which cannot be avoided, in the cleanest and best of soil the moisture and air seeps into the ground, begets rust and the process of disintegration begins from the very moment they are made, whether under the ground or above it, but pipes laid in the ground are subject to special dangers; some soils are very destructive to pipes, others less so; some soils are considered in them-

selves in-occulous or practically so; some clays are very injurious and when your pipe begins to rust the rusting process goes on with great rapidity; some clays I have known to destroy pipe in very few years. On the other hand, I have known clays so clean and pure that 40 or 50 years after pipes have been laid I have seen them taken up with scarcely a trace of rust upon them; the clay itself forming a protection against the action of water and air to prevent rust. Another new source of disturbance is electrolysis on pipes; electrolysis, so far as my observation has gone and it has been somewhat extensive, has led me to believe that it results more largely from the electric street cars than from the electric lighting system, but it is a growing and serious danger and the electrolysis of pipes is not limited to the pipes under the street car tracks, or close by a street car system, but it is liable to attack it at long distances
471 from the street cars and in my experience has done so a good many times; the action of the electric current is as much, if not more, at a point where the electricity leaves the pipe as it is where it enters the pipe, so the electric current might lead down into the pipe from a trolley system and travel along that pipe as a conductor and finding some suitable ground, full of moisture or other substance that current would be deflected away and where it leaves the pipe is where the action of electrolysis, as I have found it, is most destructive.

41. Are gas holders subject to depreciation, if so to what extent?

A. As I said, they are made of thin sheets of iron or steel and require a great deal of attention to keep them from rusting but in spite of all the attention that may be given them gas holders will rust out.

42. In your judgment how should this matter of the depreciation of a plant be taken into account in conducting the business of a company, that is in the way of providing a fund or otherwise to meet the expense caused by such depreciation?

A. The question of a fund for depreciation is not a new one; it has been discussed, not only by gas men, but by all other men in manufacturing business and among holders of property generally, even houses where they hold large blocks of houses, and it is generally recognized; I might add shipping, that same thing has been enforced in all shipping offices, that is, charging off a depreciation in the value of the ship from year to year by insurance companies; they know that a ship has a life to it and they write of its value year by year and if you try to sell you would find that every year from the day it was built it becomes less and less salable; the same rule which applies to shipping applies equally to a gas works and those who have had anything to do with gas works have always
472 recognized the setting aside of a regular sum or per cent. for the purpose of making a depreciation fund.

43. From your knowledge and experience as a practical man in gas manufacture and construction, what in your opinion would be a proper percentage of the entire cost of the plant of the Peoria Gas

& Electric Co., exclusive of the cost of the real estate, to be charged off annually as an average annual depreciation.

A. From my knowledge and experience in gas manufacture and construction, I would estimate, taking all of the construction value of the plant—by that I, of course, leave out real estate and brick tanks which are not included in that—brick tanks are liable to last a long time, the destructive forces are not there, but all the metal work and machinery, fire brick work, pipes, meters and other appliances taken on the average I am of the opinion that about 6 per cent. would be a fair estimate of the amount of money that would be required to be set aside from year to year for depreciation.

(The MASTER:)

44. Let me see if I understand you. Do you mean this six per cent. fund should be charged off for that depreciation which follows from natural causes and not from extraordinary causes?

A. From natural causes or it might be an extraordinary cause, but generally speaking it would be natural causes.

(The MASTER:)

45. What I want to get clear in my mind is whether or not you take this six per cent. fund for the purpose of repairing or reconstructing by reason of damage from extraordinary causes, or whether it is from natural causes alone to which this is to be applied?

A. It is the natural depreciation that I was considering; the extraordinary causes, speaking from my own experience and knowledge, are not a very important item. For instance, a retort
473 bench does not as a rule break down suddenly and go to pieces unexpectedly; boilers don't blow up if watched and cared for right.

(The MASTER:)

46. But meters get out of order and pipes burst and all those things?

Ans. Yes sir.

(The MASTER:)

47. This fund don't apply to repairs of that kind at all?

A. No sir, not until it calls for the renewal of your meter; your new meter and new main would come out of that depreciation fund; your new retort bench would come out of the depreciation fund and all such work.

(The MASTER:)

48. I understand that but these things follow from a natural cause and the use they are subjected to in the operation of the business?

Ans. Yes sir.

(Mr. ABBOTT, resuming :)

49. Aside from the general depreciation, concerning which you have testified, what are some of the hazards of the gas business as an investment?

A. Well there is another form of depreciation I have not spoken of; you frequently are under the necessity of making renewals because your plant has become too small or become out of date, that is, it is not the most economical kind in operation. For instance, the old firing benches, as I have already testified, have been superceded by recuperative benches; even if the old style firing benches had been sound and in good shape, they would be valueless because they are not economical to operate, therefore, they would have to be pulled down and that is another eventuality which you have to consider in the line of a natural or an extraordina-y cause and that certainly is an important thing. We are today threatened with a change from the recuperative benches to what is known as sloping retorts which would call for the absolute new construction of the bench.

474 50. Do you mean your gas plant particularly?

A. No, the attention of the managers of gas plants all over the country is being drawn to the advantages of sloping retorts so the coal can be slid in at the top and the coke dropped out without any intervention by shoveling in putting in the coal or pulling out the coke; if that is found to be the most economical way of making gas, all gas companies will be compelled, whether their old retorts are decayed or not, to renew them. Another source of depreciation which is very common, especially in a growing city, is that a main, which has been down 10 or 12 years or 15 years but still has a reasonable life of 10 or 12 years and possibly more in it, is found to be too small and has to be taken up and a larger one laid; the old pipe would have lasted 10 or 12 years more but you have to take it up—what are you going to do with the old pipe? It is not good enough to lay down as a new pipe because its remaining life will not warrant it and the old pipe is lost. That is an important item of depreciation, especially as I know in a city like Minneapolis; this depreciation due to changes has been enormous in this city, as I know from my experience as general superintendent of the Minneapolis Gas Company in the past. The Minneapolis Gas Company has been in existence something over 30 years and I think the works themselves have been practically rebuilt five times in the 30 years due to the rapid growth of the city; its mains have been laid in some instances two or three times and enlarged without the old mains having reached a condition of decay; it is an enormous expense and it has to be met more or less in all cities and especially so in rapidly growing cities.

51. Is the competition from other forms of lighting a hazard to investment in gas properties?

475 A. Yes sir, decidedly so.

52. Is there any hazard to an investment in gas property arising from the possibility of other companies being granted franchises by the city council?

A. At the time of the introduction of electric lighting there was a tremendous drop in the market value of gas securities; we have been seriously threatened also in recent years, as we supposed, by acetaline gas which caused a great feeling of insecurity as to whether the new gas being so much richer and a better illuminant, if it were able to be distributed from small works or in blocks or in private houses even by separate isolated plants, would not throw the gas business out altogether. It was a threat. We have from time to time from the electric men today threats of improved lamps that may throw the gas business very much behind in lighting. The natural gas found in certain sections of the country has made immense inroads in the sales of the gas companies at such points for fuel purposes.

53. Aside from the competition from other forms of lighting, is it a hazard to an investment in gas property, that other franchises may be given to other companies to operate in the city, especially where the franchise of a given company is not exclusive?

A. Undoubtedly that is so.

54. Now, from your experience and observation in the management and investigation of gas plants, are you able to state what would be a reasonable and fair return to investors, taking into consideration the hazards of the investment on account of new inventions and the competition concerning which you have testified?

A. Yes sir.

55. What would be a fair and reasonable return to investors on the cost of such plant, taking into consideration the hazards

476 of the business?

A. My opinion is that a manufacturing business of this character subject to the hazards incident to it should have an interest on its investment amounting to about 8 per cent. per annum.

56. Having reference to the plat marked Exhibit "1" and to the assumption as to the cost of materials, labor, etc., entering into the construction of this gas plant; and assuming further that the superintendence of the entire work was in charge of the vice president, general manager and other officers of the company, and was not being done by architects and contractors, would the salaries of such officers during the time of construction be a proper element to be considered in determining the cost of the plant, and, if so, what in your opinion would be a fair percentage on the cost of the plant to be allowed for such salaries or services?

Objected to on the same grounds similar questions have been objected to.

A. The fees of a gas engineer for the construction of such a plant as is constructed at Peoria would be about 5 per cent. of the cost of

the work, and all the charges of the company of whatsoever nature, whether in the form of salaries, or of interest charges, up to the time that the gas company began its operations should, and properly, be charged to its capital account and entered upon the books as forming part of the investment of that company—all of it. I think that is a clear understood rule with regard to all companies. I don't know of any other account it could be charged up to; there is no profit and loss account and it must be charged to the capital cost.

(The MASTER:)

57. Do you mean the cost of construction?

A. The cost of your secretary keeping the accounts of the construction of your building is as much a part of the cost of
477 those buildings as the brick or lime put into them.

(The MASTER:)

58. You mean, then, these charges should be charged to the cost of construction?

A. Certainly, the cost of keeping accounts is as much the cost of the house as the material that goes into its construction; it is also manifest that upon all large works extending over years that the interest charges must be cumulative and form part of the investment; there is no other place to charge it to; it must come out of the whole original fund.

Cross interrogatories by Mr. MANSFIELD:

1. In estimating the cost of this gas plant, did you take into consideration the amount of money that was paid to the gas engineer and the officers of the company during the period of construction when you state the gas plant was worth $440,000?

A. I did.

2. What value did you place upon the retort house and its contents in making that estimate?

A. I did not divide my estimate.

3. What in your opinion would be the value of the retort house with its contents?

A. I am not prepared to answer that.

4. What would be the cost of the boiler house as shown upon Exhibit "1" in evidence in this case?

A. I am not prepared to answer that; I have not seen the plans or specifications yet; I think I have explained thoroughly but, if not, I will do it now; my estimates were based in the aggregate as a matter of experience with the cost of such plants and not in detail and I am not prepared to answer questions asking me for the details of the cost of that work at the present time.

478 5. What in your opinion would be the cost of the coal and coke storage house as shown upon Exhibit "1"?

A. Same answer as before.

6, What would be, in your opinion, the cost of the 7 benches of 9 retorts as shown upon Exhibit "1"?

A. The same answer although I might be able to give you that nearer, but perhaps I had better not go into details of any kind.

7. What would be the cost of one brick and steel stack, or did you know there was a brick and steel stack on the premises of the Peoria Gas & Electric Co.?

A. I knew there must be a stack.

8. Did you know of what material it was constructed?

A. I did not.

9. Is there any difference in the price of boilers that are used in the manufacture of gas?

Ans. Some.

10. Mow much do they vary, taking two boilers of 100 horse power each, what would be the variation in the cost price?

A. I am not prepared to answer.

11. Do you know what kind of boilers were erected in that plant?

A. I do not but I assume they were horizontal, multitub-lar boilers.

12. Do you know whether there is any steam and water connections upon the plant of the Peoria Gas & Electric Co. in the city of Peoria?

A. There must be.

13. How many stacks are there upon the premises of the Peoria Gas & Electric Co. in the city of Peoria?

A. Two at least.

14. What was the cost of the ammonia apparatus of the
479 Peoria Gas & Electric Co.?

Ans. I don't know.

15. What was the cost of the fixing bench of the Peoria Gas & Electric Co. as erected in the city of Peoria?

A. I don't know.

16. Do you know of what material the retort house in complainant's plant in the city of Peoria is made?

A. I assume it is brick but I don't know.

17. Do you know of what material the office building——

A. (Interrupting.) I know nothing of the o ffice building.

Mr. ABBOTT: Complainant objects to this line of examination as not cross-examination, for the reason the witness has stated fairly and frankly that he is not prepared to give figures in detail on the construction and material and asking him in regard to such matters simply encumbers the record for no purpose.

18. Do you know what the cost of the water condensers were in the plant of the Peoria Gas & Electric Co.?

A. I don't know, the same answer.

19. Do you know what the cost of the two scrubbers erected by the Peoria Gas & Electric Co. was?

A. Same answer.

20. What, in your opinion, as an expert would the two scrubbers erected in a plant of that kind be worth as shown by Exhibit "1"?

A. It would require more time than I have to figure it out in detail.

21. Can you figure that out from the plat marked Exhibit "1" shown you?

Ans. No.

22. Did you obtain any data from Exhibit "1" from which you calculated the value of the manufacturing plant of the Peoria Gas and Electric Co.?

Ans. Yes.

480 23. What data did you obtain from said exhibit?

A. I obtained a general idea of the layout of their plant and approximately what they had and saw that it was a good plant of fair, average, modern construction.

24. State what you found on Exhibit "1" upon which you based your estimate of the cost of the plant?

A. The retort house there, as I understand, consists of 7 benches of 9 retorts each, full depth recuperative benches; there are boilers, engines, exhausters, condensers, scrubbers, tar tanks, gas holder and all the necessary appurtenances of a gas works necessarily attached thereto—buildings, etc.

25. What in your opinion would be the cost of the meter and the connections necessary for a plant of the size and character of the Peoria Gas & Electric Co.?

A. I am not prepared to say.

36. What in your opinion would be the cost of the gas holder and tank of a capacity of 300,000 cubic feet erected upon the premises of the Peoria Gas & Electric Co.?

A. Same answer.

27. Do you know the depth of the foundation of the gas holder on the premises of the Peoria Gas & Electric Co.?

Ans. No.

28. In figuring upon the cost of the plant, in estimating your cost, what depth did you give to that foundation, if you gave any?

A. The ordinary depth would be about 4 feet below the floor line.

29. In making your estimate of the cost of the Peoria Gas & Electric Co.'s plant in the city of Peoria, did you take into consideration a chemical laboratory attached to the plant?

A. I did not.

481 30. Are you familiar with the cost of retorts and the material that entered into the construction of the plant of the Peoria Gas & Electric Co. in the city of Peoria?

A. Except that I am informed that the average price of labor was $1.50 per day.

31. Do you know what kind of lumber is in the plant of complainant's company in the city of Peoria?

Ans. No.

32. What is the effect of electrolysis upon the pipes?

A. It converts the iron into rust, or steel into rust.

32. To what extent might it be converted into rust?

A. All of it—a complete conversion.

33. Where the electric current leaves the pipe would it so pit the pipe that it might break of its own weight?

A. Yes sir.

34. From your experience with gas pipe, have you ever seen a pipe broken completely off by the action of electrolysis like a clear break right through?

A. I have not seen it like a clear break, no.

35. How many cubic feet of gas could the plant of the Peoria Gas & Electric Co. manufacture per day?

A. If all the retorts were in operation?

36. Yes sir.

A. Between six and seven hundred thousand cubic feet; that don't assume, though, that all the retorts are going.

37. Suppose that the plant contains an ammonia concentrator that is only capable of taking care of the ammonia obtained from the manufacture of 165,000 cubic feet of gas per day, would you then consider that gas plant a modern gas plant and so constructed as to reduce the cost of the manufacture of gas to a minimum, taking into consideration the assumption that the gas plant, as
482 described, manufactures 500,000 feet of gas per day?

Objected to as immaterial, incompetent, not cross-examination.

The MASTER: I do not think the hypothetical case is based on the evidence and do not think it competent, but the witness may answer subject to the objection.

A. It is convenient that all parts of the plant should be commensurate, but the question of ammonia is not a very large or important item in the manufacture of coal gas.

38. Would the manufacturing cost of gas bee reduced by the addition of a tar still attached to the Peoria Gas & Electric Company's plant in your opinion as an expert?

A. The distillation of tar is not generally considered as an ordinary addition to a gas works, but profit might be made from it; in all probability a gas works of the size of complainant's plant would operate a tar still at a loss.

39. As a gas expert in computing the cost of the manufacture of gas what residuals are taken into consideration in computing that cost?

Objected to as immaterial, incompetent and not cross-examination because the estimate on direct examination excluded the value of the residuals.

A. I understand you to ask what are the commercial residuals of a gas works?

40. Yes sir;

A. The commercial residuals of a gas works are coke, tar and ammonia.

41. Are there any other residuals known in the manufacture of gas?

Objected to same grounds as before.

A. In every large works where there are sulphuretted acid works near, spent oxide, or oxide of iron, which has become thor-
483 oughly saturated, or mixed with at least 50 % of sulphur is sold; I don't know of any small works that sell it.

42. Is there any such bi-product known as nap-thaline obtained from the manufacture of gas?

A. Not as a bi-product.

43. What kind of a product do you call it?

A. It is a nuisance, that is I mean when we find it in a solid state it is a nuisance and one of the most perplexing and troublesome nuisances we have got; when it deposits itself in a pipe or in any part of the works in a solid condition, it is a big nuisance.

44. In stating the cost of the distribution of gas, did you take into consideration the fact that nap-thaline might be deposited in and along the pipes of the company?

A. Certainly.

46. Would the location of the plant in that regard make any material difference as to the amount of nap-thaline that might be accumulated or contained in the pipes?

A. It is not a matter of the location of the plant in my opinion.

47. If the pipes are laid in a level country, is not there more trouble in clearing the pipes of the nap-thaline which may condense in them, than there would be in a country where a drainage back to the plant itself could be obtained?

A. No, for in a solid state it will not run; all pipes are drained anyhow of everything that will flow and nap-thaline in a solid state don't flow.

48. Is it not a fact that some gas companies have traps in the pipes for the purpose of catching or accumulating this nap-thaline?

484 A. No sir. In all gas work connections there are open elbows T's and such like left so it can be removed and you will find that nap-thaline will choke a vertical pipe as well as a horizontal one.

49. From your knowledge as a gas expert, what in your opinion would be the cost of coal gas in the holder of a company per thousand cubic feet to a company whose plant was such as you have assumed the Peoria Gas & Electric Co.'s plant to be, and in answering this interrogatory, take into consideration also the fact, that the bi-products of tar, ammonia and coke are extracted and sold, the tar for 5 cents a gallon, the ammonia for 8 cents a pound and the coke at an average price of $3.25 per ton; also take into consideration that 22 per cent. of the coke made is used in heating furnaces

and that Youghiogheny coal cost $2.65 per ton f. o. b.; also take into consideration all the expenses of the company in the manufacture of the gas up to the holder and all the revenues of said company obtained from the sale of the residuals, coke, tar and ammonia, basing your estimate on a daily make of 165,000 cubic feet per day; also taking into consideration that the cost of the coal used for fuel purposes, other than the coke used, costs $1.10 per ton?

Objected to as immaterial, incompetent, not cross examination, and as a hypothetical question based upon assumed facts which are not of record.

A. I think I generally understand the question, but there is one point that strikes me as not being in accordance with the facts of ordinary operation, therefore, the answer cannot be taken as my opinion of what the cost of gas in the holder would be; you put an arbitrary 22 per cent. of the coke made used as fuel; that is too low.

485 50. I am assuming it upon that basis and asking you to assume that as a fact and ask you your opinion as to the cost of the gas in the holder?

A. There is a lot of figuring there; in the first place ordinary coal contains so much smoke it could not be used in those furnaces at all. As a gas man, am I going to stultify all my knowledge and assume those things, your honor?

The MASTER: Yes, if you can answer the question on that assumed state of facts.

The WITNESS: We could not run under those conditions.

The MASTER: That is not the question what you could do; it is a hypothetical question.

Mr. MANSFIELD: Other gas experts have answered it and they must have stultified themselves if you call it stultification, and they didn't complain about it either; they were dead willing to answer.

A. I know there are some people who brag about doing a good many things but when you get down to examine them they don't always fulfill what they claim they can do. I have to answer this question, do I?

The MASTER: If you can.

A. I can answer it approximately, of course. What is the connection between the $1.10 per ton for coal and the 22 per cent. for coke; do you propose to use coal for your furnaces or coke?

Mr. MANSFIELD: If you don't use any of your fuel at all there, make it on that basis; if you do use any of your fuel there, calculate it at $1.10 per ton.

A. I am not going to use any of that coal; you say I have to use coke or coal and in those figures I will use coke because there you give me a definite figure; the coal is a very indefinite figure;

486 I will say this with regard to coal; while I know coal has been used with some economy in some places I have had no

experience in using coal in firing retorts. What do you mean by the expenses of the company in the question?

Mr. MANSFIELD: All the expenses of the company, that is, manufacturing expenses, cost of labor, cost of materials, purification material, everything that goes into the manufacture of the gas.

The WITNESS: It include- superintendence, does it?

Mr. MANSFIELD: Merely around the plant there.

The WITNESS: I mean superintendence of the work, foreman in charge of the works; at $3.65 per ton for coal, the labor and other expenses, men, stokers around the works, I figure at 25 cents making 51 50/100 cents; 1320 pounds of coke to the ton of coal less 22 per cent., 290 pounds, leaves 1030 pounds of coke per ton at $3.25 is 1.67 which means .16.73 per thousand; tar 1 gallon per thousand 5 cents; ammonia—I am averaging the net ammonia at 30 cents per ton of coal, or 3 cents, makes the total of these residuals on the basis of those figures 24 73/100 cents; that taken from 51 50/100 leaves 26 57/100; then if you take a foreman's wages in charge of the works at $5.00 per day it makes 3 cents, which makes the total cost of that gas in the holder about 29 57/100 cents on your hypothetical question. Is that what you are trying to get at?

51. Yes sir. What would be the cost of gas in the holder under the same conditions where the total make was 500,000 cubic feet of gas per day?

Objected to as incompetent, immaterial, not cross examination, and based on assumptions not in the record.

A. I don't want to sit here and make calculations, but on the larger quantity, I will say it would be less without going into details.

487 52. About how much less?

A. Perhaps 2 cents, that is, assuming all this data is the same proportions.

53. Would not there be a greater reduction than that?

A. No, I think not. You see it is entirely a question of labor; you figure an absolute quantity of coke, all your percentages are the same of coke and other things are all fixed—there is no change; you could not get these results upon 165,000 per day, however; I will say that but I am answering your question as you present it to me.

54. What would be the cost of the distribution of that amount of gas per thousand cubic feet—what enters into the cost of the distribution of that amount of gas per thousand cubic feet?

A. The items that enter into the distribution of gas are the repairs of mains, services, meters, attention to complaints, changing of meters, meter readings and all the little things outside of the works and outside of the office and it would cost about 25 cents per thousand cubic feet including everything. In other words, the cost of

distribution forms a very important item in the cost of gas delivered at the burner.

Re-direct interrogatories by Mr. ABBOTT:

1. Considering the plant of the Peoria Gas & Electric Co. as the same has been described to you, what, in your opinion, would be the value of the residuals per thousand cubic feet of gas, basing your answer on your knowledge and experience of the amount of such residuals as would result in the operation of a plant of that size and character?

A. That is only asking me what my estimate of the value of the residuals per thousand cubic feet would be.

Mr. MANSFIELD: I object to it as incompetent, as the wit-
488 ness has not shown that he knows anything about the selling price of those residuals in the city of Peoria and also because it is not proper redirect.

The MASTER: I do not think that question or answer competent still he may answer further subject to the objection.

The WITNESS: In plants of that character we find about 800 pounds of coke to the ton of coal available for sale, 10 gallons of tar, and approximately about 4 pounds of ammonia per ton.

2. Then assuming that the market price of those residuals is approximately the same in Peoria as in other places of which you have had knowledge and experience, state what in your judgment is the fair market value of those residuals per thousand feet of gas

A. About 30 cents.

3. In your direct examination you gave your estimate of the cost and of the fair market value of the plant of the Peoria Gas & Electric Co., basing the same upon the inspection of the plat and certain assumptions given you as to the cost of labor and material; in your cross examination you stated you were unable to go into detail as to the cost of the different buildings and appliances. I will ask you to state if as a result of your knowledge and experience in the construction of gas plants, you have formulated a method or system of arriving at the approximate cost of a complete manufacturing and distribution gas plant which your experience has shown to be approximately correct?

Ans. I have.

4. What is that method or system?

A. Taking the volume of gas which a works is able to produce and distribute per day under all normal conditions—average conditions—and a plant capable of manufacturing and distributing including, first, expense of organization, real estate, works, mains, services, meters, office, working capital all goes to a gas works
489 and if I were asked how much approximately that plant would cost complete I would say it would cost about $1200. per thousand of the capacity of the works per day. In other words,

the works complete, with all its mains, which would — probably 40 or 45 miles of mains, with all its services and meters laid, would cost about $600,000; it is an approximate estimate but it is one way of arriving at what the works cost and leaving out all the details and checking it often gets you nearer to the mark. In the same way you ask an architect to tell approximately what a house of a certain size will cost, he cubes the house and having an idea of the character of the house to be completed he averages it at so much per cubic foot; it is a good way of checking and gives you a rough idea of what a building has cost.

5. From your knowledge and experience, does that method of computation furnish an approximately accurate estimate of the cost of the property of this description?

A. It does.

Re-cross interrogatories by Mr. MANSFIELD:

1. Was that the basis upon which you calculated the cost of this manufacturing plant?

A. No, because its manufacturing plant is not complete.

2. In what way is it not complete?

A. It has not got means commensurate with the works; its mains are not all laid.

3. How much of its mains are not laid?

A. I could not say but probably 15 miles more mains would have to be laid to make 40 or more miles of mains.

4. What would be the cost of the 15 additional miles of mains?

A. About $50,000, because they would be small; the larger mains would not come into that estimate.

490 5. Then upon your estimate of the cost of the Peoria Gas & Electric Company's plant, including the 15 more miles of mains you would state that plant was worth $480,000?

A. No, I should say $600,000, because you have to add more services, more meters; there are a lot of things to add which would bring it up to the $600,000.

6. Did you take into consideration when you estimated this that the services were laid into the houses at the expense of the company?

Ans. Certainly that is customary.

7. How long since has it been customary?

A. Wherever I have been in my experience I have always done it everywhere with one exception; for about a year after I first came to Minneapolis we charged part of the cost of putting in service pipes to the consumer but now that is abandoned and has been for many years; this was the only works in my charge where we ever charged anything for services; it is generally recognized as poor business policy to ask consumers to pay for services.

Adjourned to meet at the Spalding house in the city of Duluth, Minn., on Thursday, December 12, 1901, at 2 p. m.

Spalding house, Duluth, Minn., parlor F.

THURSDAY, *December* 12, 1901—2 o'clock p. m.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin and Mr. W. T. Abbott, appearing for complainant. Mr. Henry Mansfield appearing for defendant.

L. N. CASE, called on behalf of the complainant, being first duly sworn, deposes and says:

Direct interrogatories by Mr. ABBOTT:

1. State your name, residence and occupation.

491 A. L. N. Case; Duluth, Minn.; manager of the water and light department of the city of Duluth.

2. Does the water and light department of the city of Duluth include a gas plant?

Ans. Yes sir.

3. State whether the gas plant in the city of Duluth is under municipal or private ownership?

Ans. Municipal.

4. What position do you hold under it?

Ans. Manager.

5. From whom do you receive your appointment as manager?

A. From the board of water & light commissioners.

6. How is the board of water and light commissioners appointed?

Ans. By the mayor for a term of five years.

7. Is the city of Duluth operating under a charter?

A. Yes sir.

(The MASTER:)

8. Is this board of water and light commissioners you speak of one of the municipal departments of the city government of Duluth?

A. Yes sir.

(Mr. ABBOTT:)

9. Look at the document now shown you marked Exhibit "11" and state if that is the charter under which the city of Duluth is now operating as a city?

A. Yes sir; it is our city charter.

Mr. ABBOTT: Counsel for complainant offers in evidence the title page of the document just identified by the witness, entitled, "Duluth city charter," and especially offers in evidence from said document sections 81, 82, chapters 7, 11, 14, and sections 154, 170, 175, 176 and 450.

Defendant objects to the document as incompetent and irrelevant but admits that the same was adopted by the city of Duluth and that — is a correct copy of the laws of the State of Minnesota.

492 Said document marked Exhibit "11" entitled "Duluth city charter" is hereto attached and made a part of the deposition of this witness.

10. State how many commissioners there were on the board of water and light commissioners of the city of Duluth for the 18 months ending December 31, 1900?

Ans. Five.

11. Do you remember who they were?

A. During that time C. A. Duncan during the entire time; Hansen Smith the entire time; Samuel F. Snively, H. H. Martindale and Giles Gilbert.

12. State whether you held your present position during the 18 months ending December 31, 1900?

Ans. Yes, sir, I did.

13. It appears from the charter, and the chapters devoted to the board of water and light commissioners, that a certain annual report is required of the said commissioners. I will ask you to examine the document now shown you marked Exhibit "12" and state whether or not that is a report of the board of water and light commissioners for the 18 months ending December 31, 1900, as provided for in said charter?

Ans. It is.

14. Is it the report for the time it purports to cover, that is, the 18 months ending December 31, 1900?

Ans. It is.

15. By whom was that report prepared?

A. By myself commencing on the 9th page; previous to that is the commissioners' report to the city council.

16. State whether that portion of the document up to page 9 is the report made by the commissioners?

Ans. It is.

17. In the remainder of the document under the heading "Report of the manager," are certain tables and statistics. You may state, if you please, who prepared those tables and statistics?

A. I did.

493 18. Were they prepared by you personally?

Ans. Personally.

19. Are all of the figures contained therein with reference to the gas part of your public work true and correct?

A. They are.

20. And are the figures, tables, schedules and statistics given in the portion of this document from page 9 to the end under the heading "Report of the manager" figures that were prepared by yourself and are true and accurate?

Ans. Yes sir, they are.

(The MASTER:)

21. Who approved the report, if anybody?

A. We had experts appointed by the council who examined our books and records and this report and certified to its correctness to the city council which certificate can be obtained of the city clerk if desired.

(The MASTER:)

22. What action was taken, if any, on that certificate by the city council?

A. It was approved and accepted.

Mr. ABBOTT: Complainant offers in evidence the document identified by the witness marked "Exhibit "12" including particularly the title page reading as follow: "Second annual report of the board of water and light commissioners of the city of Duluth, for the 18 months ending December 31, 1900, together with the report of the manager."

Complainant also especially offers from said document pages 5, 6, 7 and 8 of the report of the board of water and light commissioners; and of the report of the manager complainant offers in evidence particularly page 11 in full and pages 12 and 13 so far as they relate to the gas department; also page 15 in full and page 17 beginning with the words "gas plant;" pages 20, 21 and 22 complete; page 27 beginning with the word- "gas plant" and ending on page 28 at the words "auxiliary accounts."

494 Said document so offered in evidence is hereto attached marked Exhibit "12."

Defendant objects to the document as immaterial and incompetent but admits it was made in accordance with the requirements of the city charter of the city of Duluth and was approved by the city council.

23. You may state the price now charged for gas in the city of Duluth, giving the price charged for both illuminating and fuel gas, if different prices are charged?

A. $1.35 per thousand cubic feet for illuminating gas and $1.25 per thousand cubic feet for fuel gas; 10 cents discount for illuminating gas if paid on or before the 12th, of the month and 25 cents discount on fuel gas if paid on or before the 12th, of the month, making the illuminating gas net $1.25, fuel gas net $1.00.

24. Were those prices charged on or about September 1, 1900?

A. No sir.

25. What prices were then charged?

A. $1.50 per thousand cubic feet with 10 cents discount making $1.40 for light net; fuel gas was the same as it is now.

Cross-interrogatories by Mr. MANSFIELD:

1. How long have you been in the gas business?

Ans. 3 years.

2. Do you consider you have an expert knowledge of the manufacture of gas?

Ans. No sir.
3. You made this report, did you?
Ans. Yes sir.
4. What kind of gas do you manufacture here?
Objected to as immaterial, incompetent, not cross-examination.
A. Water gas.
5. How long have you been manufacturing water gas?
A. All the time.
6. Then these figures you have here are based upon the manufacture of water gas, are they not, in the city of Duluth?
495 A. Yes sir.

Adjourned to meet in the directors' room of the St. Paul Gas & Light Company at St. Paul, Minn., on Friday, December 13, 1901, at 11 o'clock a. m.

Directors' room of the St. Paul Gas & Light Co.

St. Paul, Minn., Friday, *December* 13, 1901—11 a. m.

Parties met pursuant to adjournment.
Present: Judge I. C. Pinkney, special commissioner, Mr. W. T. Irwin, Mr. E. C. Ritcher, Mr. W. T. Abbott appearing for complainant. Mr. Henry Mansfield appearing for defendant.

A. P. Lathrop, called on behalf of complainant, being first duly sworn, deposes and says:

Direct interrogatories by Mr. E. C. Ritcher:

1. State your name, age and residence.
A. A. P. Lathrop; 41; St. Paul, Minn.
2. What business are you engaged in?
A. The gas and electric business.
3. What position do you now hold with reference to such business?
A. I am president and general manager of the St. Paul Gas & Light Co. and vice president and general manager of the Edison Electric Light & Power Co. of St. Paul, Minn.
4. Are you familiar with the business of the manufacture and sale of gas?
Ans. Yes sir.
5. How long have you been connected with the manufacture and sale of gas in any capacity, and in what different capacities, beginning with your earliest experience?
A. I think in March, 1886, I first became connected with
496 the gas business as a clerk in the superintendent's office of the Columbus Gas Light & Coke Co. of Columbus, Ohio, and was connected with that company in various capacities until February 1, 1900; since that time I have been connected with these companies here as mentioned before.

6. With what gas plants are you familiar and what different gas plants have you examined during your experience?

A. I have never made a critical examination of any gas plant other than the ones I have been connected with but I have visited numbers of them in different parts of the country.

7. Your connection with the manufacturing gas business, as I understand you, has been continuous since about 1886?

A. Yes sir but more particularly with the commercial end of the business than with the manufacturing end until my connection with the St. Paul Company.

8. From your experience, knowledge and observation of the gas business, will you please state what elements, forces and causes of any kind tend to depreciate a gas plant and its mains under the ordinary conditions which would exist in any city, say of about 50,000 inhabitants?

A. Commencing with the works. In addition to the natural decay of buildings and equipment, wear and tear, there is a chemical action, which results from the peculiar products used about a gas works, the effect of ammonia on iron, sulphur on iron, and things of that kind; also the extremes of temperature which are liable to be encountered in different parts of the works and out through the dist-ibution department there is more or less trouble now with electrolysis which acts on the mains and services and then the mains and services being covered up in soils of different characters you are unable to take care of them as you would of an appli-
497 ance which was wholly exposed, and you know nothing about the wear on them until evidence is given of it, possibly by escaping gas, or something of that kind, and you cannot get at them to make ordinary repairs as you could to an exposed appliance.

9. Aside from the general element of decay, with regard to which you have spoken, what depreciation or deterioration comes to a gas plant by reason of other causes, such as the shifting of population or demand, things of that kind?

A. It frequently happens in the distributing system of a gas works that pipe which has been put in to supply one territory becomes practically valueless because the population or the people have shown a greater preference for another locality and practically deserted that place; that is true in a good many places I know of and I think it would be in most any city.

10. How does that involve a loss to the company, if any?

A. If you have your investment in there it is practically worthless for it has no earning power and the pipes are not worth taking up as the junk value of it would not pay for the expense of taking it up, so to all intents and purposes it is absolutely a dead investment.

11. In a case where a district is supplied with pipes and grows more rapidly than was anticipated, does the same thing obtain?

A. Well that might obtain in a different way; if the business grew to such an extent that the mains in that territory were insuf-

ficient to supply the demand, you would simply have to put in larger mains, and as I said before, you would have the same condition practically, the mains that are in would not be of sufficient value to pay for removing.

12. How does this matter of unexpected increase of busi-
498 ness or rapid increase beyond original calculation, affect the plant as to buildings, material, etc., if at all?

A. Well, on the smaller lines it would, lack of capacity in the mains; when a plant reaches a certain point so its capacity is taxed, then you have either got to extend your buildings and remove these old appliances, put in new ones because the old ones are of insufficient capacity to take care of the make and, of course, the value you would get out of the appliances you remove would be nothing as compared with the original cost.

13. In your experience as a gas man, does this enlargement take the shape of extensions or rebuilding more frequently. What I want to get at is this, as a general rule when it becomes necessary to enlarge a plant, do you simply add something or is it necessary to reconstruct the whole establishment?

A. When it comes to that point, it amounts to a practical reconstruction of the plant; I would say right here that if you do otherwise than that the economy of operation would be entirely lost, that is if you simply put an appliance in wherever you found a place to put it in.

14. What is the fact with regard to the deterioration of benches in the gas business?—how rapidly do they deteriorate?

A. The benches ordinarily have to be filled every two or three years in a gas works.

15. To what extent, if you have not already fully covered that point, do changes of methods in the matter of the type of benches effect deterioration when it comes to new construction?

A. The changes in those things have been quite marked in the last few years and if you have to make a change you have got to change the entire construction of the retort house; benches are made of different sizes; in some places benches of 4's, that means 4 re-
torts, also benches of 6's and benches of 9's; a plant that had
499 in a bench of 4's could not put in a bench of 9's in the same place; everything would have to be changed about the retorts to conform with the change.

16. Aside from the refilling of benches, concerning which you have testified and which takes places every few years, what is the life of a bench as a bench approximately?

A. That would be the stack you refer to and furnaces.

17. Yes sir.

A. I should say that under ordinary circumstances from 8 to 10 years would probably take care of that.

18. In what manner in your opinion, as an expert, who has had to do with the financial end of these gas companies, does good business policy require this depreciation to be taken into account in con-

ducting the business of a gas company and getting at the cost of gas?

A. Do you mean that as to the amount of a depreciation fund, that should be set aside?

20. I want to know first whether you would set one aside.

A. I think most assuredly there is every reason for doing it

21. In what way would you set it aside?

A. Generally speaking on that line, I would say there is a constant depreciation going on in a plant that is not visible or is not noticeable from time to time, but in the course of a period you will find that an appliance is gone and you don't know where it has gone; now a sufficient sum should be set aside so that by the time this appliance is gone you have a fund with which to replace it it is a proper item to the annual expense account in connection with the operation of a company.

22. What distinction do you make, if any, between this invisible depreciation and the repairs you make to a plant, if any?

500 A. The repair and maintenance charge would be current monthly periodical expense that you go to to repair visible breaks or wearing, whereas, a depreciation account, as I stated before, would be a sum set aside to replace a worn out article at a future time.

23. Then, if I understand you right, even if a plant were kept in good general repair this matter of depreciation would still have to be taken into consideration in getting at the cost of the gas?

Ans. Most assuredly.

24. Taking into consideration all the elements you have mentioned, including special causes such as electrolysis, changing of grade, shifting of population centers, and also taking into consideration your experience and observation with respect to the renewal of plants, mains, etc., in the manner you have testified, what, in your opinion, would be a proper per cent. of the entire cost of a gas plant located in any city of 50,000 inhabitants and upwards, under ordinary conditions, which should be charged off annually in order to cover the general, average depreciation of a plant outside of repairs?

Objected to by defendant as incompetent, leading and because no proper foundation has been laid.

A. That is a somewhat difficult question to answer from the fact that depreciation on various portions of the plant would vary so much, but I should say a sum equal to not less than 5 or 6 per cent. should be set aside to cover items of that kind.

25. Your idea then is, if I understand it, that that amount should be taken out of the gross earnings of the company annually in order to replace a plant when it has to be replaced?

A. Yes sir, I should say that in 16 to 20 years the entire plant would have to be replaced and that item of 5 to 6 per cent. would cover that period.

501 26. Aside from the general depreciation, concerning which you have testified, what are some of the hazards of the gas business from the standpoint of an invester?

A. One of them, of course, is competition from any other gas company, competition from electricity, competition from gasoline and any new form of lighting which may come out, the improvement in kerosine lighting, improvements in lamps and things of that kind work a great injury most any time. Then in addition to that, I think, the fact that the business of a gas company, being a purely local business and confined to one market, makes it especially hazardous; of course, competition is what would hurt it in that case, but in most any other line of business if it is injured in its market, it can go to another market to dispose of its goods and that is physically impossible with a gas company; and in case of this competition and destruction of business, there is comparatively little in connection with a gas plant that has any particular value, of course, you have some old iron that may have some junk value, but at the same time it would not be worth enough to pay for moving and the buildings are not such as are adapted to any other line of business, so if the business dies the whole thing is practically wiped out.

27. In what respect, if any, does natural gas come in as a competitor?

A. It is about as serious a thing as can present itself to an artificial gas company; I have known of quite a number of companies that have come in connection with it and their business has been practically ruined, some of them have stopped entirely and others simply run along and do what they can to save as much out of the wreck as possible.

28. You have spoken of the fact that the market of a gas company is local, that is, that its consumers are within a pre-
502 scribed area usually. To what extent, if any, does the same circumstance make a gas company subservient to the local authorities to a greater extent than any other business?

Objected to by defendant as incompetent and irrelevant.

A. I think it is a very serious menace to the business.

29. From your experience and observation in the gas business, are you able to state what would be a reasonable and fair return to investors in gas properties, taking into consideration the hazards of the investment on account of new inventions, competition and the other hazards you have mentioned, if so, state what in your opinion would be a proper return upon the cost of a gas plant in cities of 50,000 inhabitants and upwards under ordinary conditions and ordinary hazards?

Objected to by defendant as incompetent, irrelevant, immaterial.

A. It should certainly be entitled to as large an earning power as any other manufacturing business and I doubt if anybody would

want to engage in a manufacturing business that would pay them less than 10 per cent.; I should say that at least 10 per cent. ought to be expected as a return on the investment.

30. That 10 per cent. return, if I understand you, is something entirely distinct and apart from the depreciation account?

A. Yes sir, that is after the depreciation account is allowed for.

Cross interrogatories by Mr. MANSFIELD:

1. Are you acquainted with the locality and the general situation of the city of Peoria, Ill.?

Objected to by complainant as not cross examination.

A. No sir.

2. When you speak about depreciation of cities of 50,000 inhabitants, to what cities do you have reference?

503 A. Cities of 50,000 and over I think the question was.

3. What cities did you have in mind when you answered that interrogatory?

A. No particular city but cities in general of about that size.

4. When you figured upon a depreciation of 5 per cent. in the value of a plant and stated that you would set that much aside—what did you mean by setting that much aside?

A. Well, in business parlance it would be charged up to expense account, a sum equal to that, and credit the contingent fund with an item of the same amount.

5. What would you do with the money you set aside?

A. That would depend upon circumstances; if you wished to, you could invest it in securities that were convertible into cash or you could invest it in your own property just as you saw fit, but you would not be piling up false earnings as you might be if you did not charge it up.

6. You testified that the life of a plant was about 16 to 20 years; now, if you were to set aside 5 per cent. of the original cost of the plant for depreciation and if you were to invest that money set aside at 4 per cent., would not you at the end of 16 or 20 years have more money in your treasurery than the total original cost of your plant?

A. Certainly if you set aside a certain sum of money on which you get interest and don't touch either of them at the end of the period you would have a larger amount than you originally started with.

7. In other words, at the end of the 16 or 20 years, you could erect and install a plant that cost more than the original plant you had when you first started to set aside this amount of money

504 for depreciation out of the fund you set aside for this depreciation, could you not?

A. For the same size plant, possibly, yes.

8. You could build a larger plant, could you not, that is all things being equal, materials costing just the same they did originally, if

you set this amount of money aside or invested this amount of money at 4 per cent. interest, you could build a larger plant, could you not?

A. Slightly, 4 per cent. would not cover the whole amount for the whole term of years.

9. Taking a plant valued at $432,000., the depreciation on that plant at 6 per cent. would be $25,920. per year, that invested at 5 per cent. per annum would amount in 20 years to $25,920., the exact amount that your depreciation amounts to for one year?

A. Assuming your figures to be correct, yes, but I have not verified them at all.

10. Then upon that first year's depreciation, if you invested that amount of money at 5 per cent., you would, at the end of the 20 years have a sum equal to the amount of depreciation for the first year, would you not?

A. Practically, yes sir.

11. Then to that extent it would decrease continuously from year to year, would it not?

Ans. Certainly.

12. But to that extent there would be that amount of money over and above the original cost of the plant at the end of 16 or 20 years, would there not?

Ans. Yes sir.

13. Gradually decreasing each year the amount of interest?

A. Yes sir.

13. You know nothing about the character of the soil in the city of Peoria, Ill., do you?

Ans. No sir.

505 14. And in your estimates of the depreciation which would occur you just take that depreciation as generally existing?

A. Yes, I take it from the way those things generally run and from conversations I have had with men in different parts of the country.

15. Is it based on your own practical experience?

A. Yes sir.

16. Would there be any changes in benches of 9 retorts, that is, you would not change a bench of 9 retorts to 4, 6 or 8 retorts, would you?

Ans. Yes sir.

17. After you had constructed your benches with that idea of containing 9 retorts, do you think there would be any case where you would reduce the size of those benches and lessen the number of retorts?

A. That thing might happen.

18. Do you know of any case where it has happened?

A. I think I can recall instances of that kind—I will not say positively whether old and large benches have been torn out, but I know of places that have used larger benches and afterwards put in a new building and in rebuilding put in smaller benches. The

matter of benches is largely a question of fuel. You might in one case put in a construction where fuel might be cheap under some conditions and under other conditions it would not be and the character of the bench is governed by that feature.

(The MASTER :)

19. You mean the character of the bench as to size, style or number?

A. Yes sir, in some cases it might be economy to operate a bench of 4's and in other cases it might be economy to operate benches of 9's, depending upon the fuel conditions altogether.

(The MASTER :)

20. Would the quantity of gas sold have any controlling
506 effect in determining questions of that kind?

A. The cost of fuel used in the benches has a direct connection with the cost of the gas sold or the cost of the gas sold has direct connection with the cost of the fuel and in that way the amount of gas sold would have a direct bearing upon the character of the construction.

(Mr. MANSFIELD:)

21. Would there be any risk attached to the business of a gas company resulting from the use of electric lights where the gas company had an electric branch connected with its plant?

A. There would be as much risk in that connection as any other; the investment is wiped out.

22. Would the company itself get the benefit of the wiping out of that investment provided there was only one electric company in the city and that was owned by the gas company?

A. It might and might not.

23. When might it not?

A. When the electric end of the business was conducted at a loss it might be possible in that case it would make nothing out of it and nothing out of the gas business.

Re-direct interrogatories by Mr. RITCHER :

1. You answered a question on cross examination with reference to what the amount set off for depreciation the first year would amount to in the course of 16 or 20 years. That answer was on the supposition that that fund would be invested without expense, or without loss for a period of 16 to 20 years, was it not?

A. Yes sir, certainly.

2. This setting aside of a fund for deterioration and depreciation, if I understand you, is to make a distinction between that
507 fund and net earnings, rather than set aside for investment in outside securities?

A. Certainly, in the same way a bank every year sets aside a

sum to surplus account to take care of extraordinary losses that may come; you cannot see the wear and tear on a pump or on a holder or on anything of that kind, but the first thing you know the thing is gone, and it has not worn out simply at the time you notice it is gone, but it has occurred through a period of years and this fund is set aside to take care of that thing so you have something to replace it with when it has gone out.

3. As a matter of fact, is that entire sum used in a lump at the end of a given period?

A. No sir, it is used, as I think I have already explained, as this wear is discovered.

(The MASTER:)

4. What is your experience; does the fund remain intact during the period of time in which the whole depreciation occurs, or is it used from year to year?

A. It is used from year to year; one piece of machinery might wear out in 10 years and another in 30 years, but if the average was 20 years this amount would be drawn upon at whatever time the exigency of the occasion required.

(The SAME:)

5. That is your experience in the bnsiness?

A. Yes sir.

Re-cross examination by Mr. MANSFIELD:

1. Would any part of the money set aside for depreciation be used in extending the mains if you had occasion to extend them?

A. That would be a matter of business policy; you might use that money for one purpose or another but you have it to take care of this other business when occasion requires.

2. If you made an extension of your mains at any time,
508 would you charge that up to construction account?

A. Yes sir new work.

3. If you used this money in the extension of your mains and having charged it up to construction account and credited depreciation account with it, would you then calculate upon a fair return upon that investment 10 per cent. on the amount of money you had taken out of the depreciation account and put into the extension of your mains?

A. I should hope to get a fair return from it.

4. Then if you used that money in that manner instead of its amounting to—suppose you took it on the basis of the plant costing $432,000 and the first year you allowed for depreciation 6 per cent. on that and had taken that sum of money out of the gross earnings of the company and had thereupon immediately used that money in the extension of mains, would you charge that up to construction account?

A. We would charge it to expense of construction, yes sir.

5. And you would think that a reasonable profit upon that, or a reasonable return to investors would be 10 per cent. on the amount of that money so used for the purpose of extending your mains?

A. Yes sir, I think we are entitled to 10 per cent.

6. Then upon that basis, instead of having at the end of 20 years the amount of your depreciation for the first year, you would have the amount of your depreciation together with 10 per cent. interest on that amount for 20 years?

A. Not necessarily.

7. Providing the return was 10 per cent. upon the investment?

A. Certainly they invest their money and it is set aside.

Re-re-direct interrogatories by Mr. RITCHER:

1. That money taken from depreciation account and in-
509 vested in construction account represents, does it not, a portion of the original investment which has disappeared?

Ans. Certainly.

2. And if the money that is set aside for depreciation is used for investment account, when it is called for out of depreciation account, where must it come from?

A. The stock holders have to go down in their pockets for it or else they have to mortgage the plant or sell bonds and raise money that way.

3. It is new investment?

Ans. Certainly.

Adjourned to meet at Coates house in Kansas City, Mo., on Wednesday, December 18, 1901, at 2 o'clock p. m.

Cleveland parlor, Coates house,

KANSAS CITY, MO., WEDNESDAY, *Dec.* 18, 1901—2 p. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner, Mr. W. T. Irwin, Mr. E. C. Ritcher and Mr. W. T. Abbott, appearing for complainant. Mr. Meury Mansfield appearing for defendant.

K. N. MITCHELL, called on behalf of complainant, being first duly sworn, deposes and says:

Direct interrogatories by Mr. IRWIN:

1. State your name, age and residence?

A. K. N. Mitchell; 46; St. Joseph, Mo.

2. What business are you engaged in?

A. In the gas business.

3. What position do you now hold in the gas business?

A. General manager of the gas company at St. Joseph.

4. How long have you been engaged in the gas business?

A. In the manufacture of gas or superintendence of gas

510 works 23 years.

5. Are you familiar with the different processes entering into the manufacture of gas?

Ans. Yes sir.

6. In what different capacities have you been engaged in the manufacture of gas during your experience in the gas business?

A. As superintendent of gas works and general manager.

7. What different gas plants have you been connected with and what positions have you held with respect thereto?

A. St. Joseph, Mo., is the works I have been superintendent and general manager of; those are the only gas works.

8. What are the different processes in use throughout the United States for the manufacture of gas to be sold through a general distributing system laid in the streets for illuminating or fuel purposes?

A. Coal gas and carburetted water gas.

9. From your experience in the manufacture and sale of gas are you able to state from conditions as to the price of coal, labor and the character of plant, what would be the actual cost of coal gas manufactured and delivered to consumers in a general way?

A. Yes sir.

10. You may then assume that on September 1, 1900, the city of Peoria and the territory adjacent thereto was located upon the westerly bank of the Illinois river near the center of the city upon ground gradually sloping westerly for a distance of about 1½ miles and extending along the Illinois river for a distance of about 5 miles; and assuming that the city has a population of about 65,000 inhabitants, and that on that date the Peoria Gas & Electric Co. had a modern up-to-date coal gas plant, then located at about the center thereof on the bank of the Illinois river, which plant was constructed during the year preceding September 1, 1900, with a

511 capacity of about 500,000 cubic feet of coal gas per day; you may also assume that Exhibit "1" in evidence shows the general plan of the plant of the Peoria Gas & Electric Co. upon September 1, 1900, and that connected with said plant was a gas main system of about 26½ miles in length extending through a large portion of said city consisting of 16, 12, 10, 8, 6, 4, and 2 inch mains properly connected for the distribution of gas; and that connected with said main gas system there were 2426 services of an average length of about 80 feet each, extending into the premises of the consumers; you may further assume that said coal gas plant cost at the fair market price for all labor, materials, machinery, equipment meters and whatsoever entered into the same including office and equipment, fully tested for the operation and delivery of gas to consumers, the sum of $434,252.35 and that it was constructed during the year preceding September 1, 1900, and was on that date manufacturing and delivering gas to consumers through its pipes, mains, services and meters at the rate of about 50,000,000 cubic feet

per annum; you may further assume that at the time of the construction and completion of said gas plant, and on September 1, 1900, the wages of ordinary labor were $1.50 per day, that stokers could be employed at the rate of $65.00 per month, head stoker at $75.00 per month, that Youghiogheny coal could be purchased and delivered at the works at $2.80 per ton, what in your judgment would be the actual cost of gas manufactured by said company and delivered to consumers?

Objected to by defendant as incompetent, assuming facts not not shown by the evidence and also because proper foundation has not been laid.

Mr. IRWIN: Please answer the question excluding the value of the residuals, interest on the investment and depreciation.

512 A. 89 cents.

11. Assuming the premises aforesaid and that there was a local market for coke at an average price of $3.25 per ton, that the tar bi-product could be sold at 5 cents per gallon, that the ammonia bi-product could be sold at 8 cents per pound, that cannel coal for enriching could be bought at $3.00 per ton, and that gas oil for making water gas could be bought at 3¾ cents per gallon, that coke for making water gas could be bought at $4.00 per ton and that the company was not bound by any requirement as to the candle power of gas to be furnished to consumers, would it in your judgment have been more expedient to have constructed a coal gas plant in the city of Peoria at the time the same is assumed to have been constructed than a water gas plant and, if so, why?

A. A coal gas plant because coal gas can be manufactured cheaper than water gas.

12. What elements and forces contribute to the depreciation of a gas plant and its mains and how and to what extent do they act?

A. The elements and the rust, the pipes being of iron—the machinery mostly iron, and the destruction goes on inside the pipe as well as on the outside caused by electrolysis.

13. Do the general elements have anything to do with the depreciation of a gas plant?

A. Yes sir as to the buildings and gas holder; the holder is an iron structure exposed to the elements and is rusting all the time; it is exposed, of course, to the heat of the sun and the cold which causes expansion and contract, etc.

14. In what manner in your opinion does good business policy require this depreciation to be taken into account in conducting the business of a gas company?

513 A. To set aside a certain sum annually.

15. What in your opinion, from your experience and observation would be a proper percentage of the entire cost of a gas plant of the character of the plant of the Peoria Gas & Electric Co. as described, exclusive of the cost of real estate, that should be charged off annually as the average annual depreciation?

Objected to by defendant as incompetent and also because proper foundation has not been laid.

The MASTER: I don't understand, Mr. Mansfield, what you mean by saying no proper foundation has been laid.

Mr. MANSFIELD: I mean the witness has not qualified himself to answer.

The MASTER: The witness may answer subject to the objection.

A. I should set aside about 6 per cent.

16. Would that be a proper amount, in your judgment, to set aside annually to take care of the depreciation occurring to a plant under ordinary conditions?

Ans. Yes sir.

17. Would that be an average on the whole plant including the manufacturing plant, mains and total cost of the plant?

A. Yes, I should say so.

18. That would be on the total cost of the plant, you mean, exclusive of the real estate?

Ans. Yes sir.

19. How is a plant kept up ordinarily, and from what fund, from year to year in the manufacture of gas?

A. We apportion a certain amount for benches. For instance, each month for the maintenance of that kind of work; a bench is supposed to last two years and we apportion half a cent each month for the maintenance of works that perish like that.

20. Is that considered among gas men ordinarily as part of the repair account?

Ans. Yes sir.

21. Will you state the difference between what is known as
514 the repair or maintenance account and the depreciation account.

A. The repair account is what it takes to keep the thing in running order, that is, if the pipes are broken we repair them, if the services are broken we repair them, if an engine wears out we repair it, and keep it going as long as it will go.

22. How is that distinguished from what you term as depreciation?

A. Depreciation is when the apparatus becomes useless for the purpose for which it was intended—when it is worn out or becomes useless or is too small and you have to take it out and put something else in its place and when it is worn out to put something new in its place.

23. Aside from the general depreciation, concerning which you have testified, what are some of the hazards of the gas business as an investment?

A. Explosions is one; competition from natural gas is another that is liable to strike you and legislative agitation by city councils and county courts; competition from electricity, coal oil, and new inventions coming out all the time.

24. From your experience and observation in the management and investigation of gas plants, are you able to state what would be a reasonable and fair return to investers, taking into consideration the hazards of the investment on accoung of new inventions, competition and other causes, concerning which you have testified?

A. Yes sir, I am.

25. What would be a fair and reason- return to investers upon the cost of a plant taking into consideration the hazards of the business?

Objected to by defendant as incompetent and because no proper foundation has been laid as to qualification.

515 A. 10 per cent.

26. Will you please name the different gas plants you have seen and examined during your experience in the gas business, that is such of them as may occur to you?

A. I have examined the plant here in Kansas City, at Grand Rapids, Mich.; at Milwaukee, Wis., at Toledo, Ohio; Savannah, Ga. Cincinnati, Ohio; and Louisville, Ky.; I think that is enough; I have examined quite a number more but I cannot recall them at the present time.

Cross interrogatories by Mr. MANSFIELD:

1. You testified that the cost of manufacture of gas would be, under certain conditions, as stated on direct examination, 89 cents, would that vary at all according to the number of feet manufactured by a gas company?

Ans. Yes sir.

2. Would the value of the residuals equal the amount you allow for depreciation and interest—state as a gas expert?

Objected to by complainant as incompetent and not cross examination.

A. It would more than over balance the depreciation.

3. That is upon the assumption that the plant cost four hundred and thirty odd thousand dollars?

Ans. Yes sir.

The MASTER: I suppose the value of the residuals referred to by you, Mr. Mansfield is the value of the residuals stated by Mr. Irwin in his question?

Mr. MANSFIELD: Yes, the selling price.

4. Then the value of the residuals obtained from the manufacture of fifty million cubic feet of gas would amount to over $69,000.? Is that so?

Ans. No.

5. You stated that the amount you thought n invester ought to have as a fair return on his investment was 10 per cent.?

516 A. Yes sir.

6. You also stated that the amount that should be allowed for depreciation of a plant should be 6 per cent. per annum?

A. Yes sir.

8. What would be the life of a bench?

A. Do you mean the filling of a bench?

9. No, I mean the bench itself.

A. I cannot answer that at all; the bench is an arch, your honor,—

Interrupted.

The MASTER: Make any explanation you desire.

The WITNESS: One part of the bench lasts longer than another part; the arch will last, if properly taken care of, about 20 years.

10. Then when you stated on direct examination that a bench would be worn out in 2 years, you had reference to the inside of it?

A. Yes sir.

11. How long will the retorts in one of the benches last?

A. About 2 years.

12. That is what you had reference to then?

Ans. Yes sir.

13. In allowing for a depreciation of 6 per cent., what do you do with the money you set aside for the depreciation?

A. I would use it for betterments, that is, for extensions; that is one way of doing it.

14. Take the Peoria plant for instance, what depreciation would occur in the Peoria plant as shown by Exhibit "1" in the first year?

A. I think that could be well taken care of by putting it in extensions.

15. If you put it into extensions, to what account would you charge the extensions?

A. That would be extension.

517 16. Would it go into construction account?

A. I would call that extension.

17. Then having used this money in extensions, how would you have any money to take care of the depreciation in the plant when you wanted to use it?

A. You could borrow money for that.

18. Then, in other words, you don't use this money for the depreciation in the plant but you use it for extensions, do you?

A. Yes sir.

19. How long would the plant of the Peoria Gas & Electric Co. last, that is, what would be the average life of the entire plant?

A. 20 or 25 years, I would say.

20. Putting aside 6 per cent. for depreciation each and every year, and putting that amount of money so set aside for depreciation into extensions and calculating a return upon those extensions of 10 per cent. to the investors, would you not have from the money obtained by putting aside that 10 per cent. more than the value of the plant at the end of 25 years?

A. I cannot quite get the drift of your question.

21. The first year you set aside for depreciation on the plant roughly estimated at $432,000. the sum of $25,920.; that would be 6 per cent. Now, if you invest that in extensions to the plant, you say the investors should have a right to 10 per cent. upon the amount of money invested—this 6 per cent. would be invested, would it not?

Ans. Yes sir.

22. Now at the end of 20 years, if you set aside that 6 per cent. each year and placed it in extensions and calculated interest upon that 6 per cent. at 10 per cent., would you not at the end of 20 or 25 years have nearly double the value of the plant at the expiration of that time?

Ans. I hardly think so.

23. Is it not a fact that any amount of money calculated
518 at ten per cent. will double itself in 10 years?

Ans. Yes sir.

24. Then would not it double itself in 10 years?

A. I am not figuring that interest doubles.

25. Are you acquainted with the conditions that exist in and around the city of Peoria?

Ans. No sir.

26. Do you know anything about the character of the sub soil there?

Ans. No sir.

27. Do you know anything about the pipes of the Peoria Gas & Electric Co. as to where they are laid with reference to street car lines, if any, in the city of Peoria?

Ans. No sir.

28. You have testified, in computing the hazards of the gas business, you included therein legislative action by city councils—what did you mean by that?

A. They might choose to reduce the price of your gas, or they might choose to give another company a franchise in your town; those are two very serious things.

29. What do you mean by legislative action of county courts?

A. That is in taxation; they might raise your taxation.

30. Do you mean by that that they might unfairly raise the taxation?

A. Yes sir, they are agitating the taxation of franchises in the State of Missouri now.

31. Does the law provide that franchises shall be taxed?

A. I think there is a law that has been passed by the Missouri legislature and the question now is as to whether it is a lawful act or not.

32. Would you take that into consideration in allowing 10 per cent. to investors on the value of a plant?

A. If I was investing in a business, I would certainly take into

consideration anything that would disturb the even running or conducting of the business.

519 33. What percentage of that 10 per cent., which you state would be a fair return to investors, would you allow for legislative action by county courts?

A. I could not say as to that for it might be sweeping in some cases; in some cases it might swamp you entirely and in other cases it might not be burdensome.

34. How much would you allow for that?

Ans. I could not say.

35. Would you allow one per cent. of it?

A. I would not venture to say.

36. Would you allow one half of one per cent. of it?

A. I would not venture to say.

37. Would you allow 6 per cent. of it?

A. I would not venture to say.

38. In other words, then, while you would take that into consideration, you have no idea in your own mind as to what you would allow for that purpose?

A. As I stated before, it might swamp your plant and it might be a very reasonable sum to pay; we all pay what we think is right in taxation, but we don't want to pay any more than anybody else.

39. If the law provided for the taxation of franchises when you organized your plant, would you still take that into consideration?

A. That would be taken into consideration if it were the law and established, yes sir.

40. You testified to having examined the plant located at Louisville, Ky., how long did you spend in the examination of that plant?

Ans. One day.

41. You testified as to having examined the plant at Savannah, Ga., how long did you spend in the examination of that plant?

A. I spent a day there.

520 42. I believe you testified to an examination of the plant at Omaha, did you not?

Ans. Yes sir.

43. How long did you spend there?

A. I think I was there about half a day only.

44. You testified you had examined the plant here at Kansas City. How long did it take you here?

A. I have been here numbers of times.

44. How long have you been here at any one time in an examination of the plant?

A. Several days at a time.

45. When you were at Louisville, did you know or compute from the process there what it would cost for the manufacture of the gas?

Objected to by complainant as not cross examination.

Mr. MANSFIELD: I think it goes to the qualification of the witness as a gas expert and that is the only reason I ask it.

The MASTER: It may be technically proper cross examination but at the same time I don't think it material as to whether he did or not; the witness may answer, however, subject to the objection.

A. I examined the plant at Louisville last spring for the purpose of looking at what they called incline retorts—a new invention for the manufacture of gas in this country; there was a meeting of the gas association there and while there I examined the incline retorts.

46. What kinds of gas are manufactured by your company at St. Joseph?

A. We manufacture coal gas and some water gas.

47. It is not exclusively then a coal gas plant?

A. No sir.

48. Have you ever managed any other plant than theplant located at St. Joseph?

Ans. No sir.

521 49. Has anybody spoken to you with reference to the testimony that had already been given in this case before you were placed on the stand today?

A. I talked with Mr. Irwin and Mr. Little with reference to this case; they came to St. Joe and asked if I could be present here or wherever it would be convenient for me to be.

50. Did they give you a copy of any evidence that has been testified to in this case?

Ans. Yes sir.

51. Did you read that evidence before testifying in this case

A. Yes sir.

52. I noticed when the plat marked Exhibit "1" was shown you that you did not examine the exhibit but merely testified as to what it would cost to manufacture gas in the city of Peoria by the Peoria Gas & Electric Co., that is, I mean delivered to consumers exclusive of residuals, depreciation and interest on the investment. Are you acquainted with the plant of the complainant company located in the city of Peoria?

Objected to by complainant as immaterial, not cross examination and has having been already fully answered.

A. I saw the specifications of the plant of the Peoria Gas & Electric Co.

53. Describe that plant?

A. Since I have been here I have seen Exhibit "1" or a copy of it spread out on the bed and the retort house—I will make a drawing of it if you want it.

Mr. MANSFIELD: No I don't want that.

The WITNESS: The plant consists of a retort house containing 6 benches of 9's; adjoining the retort house is a purifying house and

condensing room; to the right of the purifying house is the boiler house; to the left of the purifying house are the offices and
522 gas fitting shop; just north again of the purifying house is the gas holder; over to the north east corner is a coke shed; to the south east corner is a coal shed; those are the main points; I don't know the directions but assume that the top of the map points to the north.

Re-direct interrogatories by Mr. IRWIN:

1. About what is the value of the residuals per thousand cubic feet of coal gas?

Objected to by defendant as incompetent and not proper re-direct.

A. 25 cents per thousand.

(The MASTER:)

2. Do you mean by that the value of all residuals amount to 25 cents per thousand cubic feet of gas?

A. Yes sir.

(The SAME:)

3. The residuals you refer to are coke, tar and ammonia?

Ans. Yes sir.

(Mr. IRWIN:)

4. Taking the value of residuals at 25 cents per thousand cubic feet of gas manufactured, what would that amount to per year to a plant manufacturing gas at the rate of fifty million cubic feet per year?

A. $14500. I made a mistake in my other examination in making the figures.

5. That is what I thought and that is the reason I am asking you these questions?

A. In making my decimal point I had it $125,000. and it should have been $12,500. which goes to show that you want to look out for your decimal point.

6. Assuming that the cost of the plant of the Peoria Gas & Electric Co. was $434,000.; and assuming that the value of the real estate was $50,000., which would leave the actual cost of the plant, mains and equipment $384,000., what would be the average annual depreciation per annum at the rate of 6 per cent. per thou-
523 sand cubic feet?

Objected to by defendant as not proper redirect.

7. Assuming that a plant cost $434,000. complete with all its equipment, what would 10 per cent. on that amount per annum be to the investor?

Objected to by defendant same grounds.

A. $43400.

8. I will ask you if the value of the residuals arising from the manufacture of fifty million cubic feet per annum would be more or less than the depreciation and interest on the investment that you have testified about?

A. It would be less taking into consideration my blunder in figures.

9. Did you or not make an error in your answer to the interrogatory propounded to you on cross examination as to the value of the residuals amounting to the depreciation and interest on the investment?

A. Yes, sir, I made an error in the pointing off of my figures; I thought it was $125,000. when it should have been $12,500.

10. In fixing your depreciation to a gas plant and its mains, did you assume the ordinary conditions in a city based on the conditions of the ordinary soil, clay, sand, gravel, etc., usually found in a city?

Objected to by defendant, as incompetent, immaterial, not proper redirect and because the witness has not shown any qualification to testify as to the condition of the soil in various cities?

Ans. Yes, sir.

12. On cross examination you were asked concerning the use of the fund set aside annually for depreciation. If that fund is
524 used in extensions, enlargements or betterments, to a plant from year to year, at the time the plant would have been worthless on account of depreciation, would the use of that fund in that manner make the plant at the end of the term, when it otherwise would have become worthless, worth as much as at the time it was fully completed and ready for operation and the manufacture of gas?

Objected to by defendant as immaterial, incompetent and not proper re-direct examination.

A. I don't quite gather what you mean by the question. If you were to put this fund in main extensions, of course, that part would be worth that much more; of course, that is worth just what it costs to put it down less depreciation.

13. And if it were used in enlargements and extensions to your plant, would it not at that time make up for the depreciation?

A. Yes, that would do; that is right; if the holder had depreciated, or had become too small, I would put a new holder in using some of the money to do that with that had been put away for a fund, or if the plant were too small I would put in a larger plant; if I wanted more benches I would use some of that money if I had it there for putting in more benches.

(The MASTER:)

14. There is a point I am not exactly clear upon. I wish you would tell me what you meant by your answer when you said the life of the Peoria plant would be from 20 to 25 years. Did you mean by that, that through natural depreciation and causes incident to the business, in 20 or 25 years it would have to be entirely renewed in order to put it in its original condition?

A. Yes sir; for instance, you take St. Joseph; I built that plant 23 years ago—Interrupted——

Mr. MANSFIELD: I object to this.

The MASTER: I think it is proper for the master to understand what a witness means when he testifies to a fact. Counsel
525 can make objection and have the objection entered of record, but the master will ask such questions as he deems proper and insist on an answer.

The WITNESS: For illustration, take St. Joseph; I built that plant 23 years ago and about 10 years ago we began to make room for a retort house over on the other side of the old retort house and built a section of a new retort house; then the old benches were in a delapidated condition, they had been running about 17 years and were just about ready to tumble down and we had to get ready to put new benches in and take the old ones out as they were rendered useless by the natural wear and tear and we had to have new retorts.

(The MASTER:)

15. How was that depreciation with regard to the holder?

A. The holder, of course, is there now, but it is useless because the sheets have deteriorated by the weather and it leaked so bad we built a new holder and the old holder is down in the pit now.

(The MASTER:)

16. That is from natural causes and causes incident to the business?

Ans. Yes sir;

(The MASTER:)

17. That is the point I wanted to get clear in my mind?

A. Yes sir; I have been there and I have put the stuff in and have taken it out and know what I am talking about. I have taken care of the gas works at St. Jo.; I built them and now have taken down the original works.

(The MASTER:)

18. Is that true as to gas works generally?

A. Yes sir;

Re-cross-interrogatories by Mr. MANSFIELD:

1. Taking into consideration then upon the hypothesis of Mr. Irwin, the value of the residuals and also the depreciation and interest, what, then, in your opinion, would be the cost of gas to consumers manufactured by the Peoria Gas & Electric Company
526 in the city of Peoria upon the basis of 50,000,000 cubic feet per year?

Objected to by complainant as not proper re-cross examination, and simply calling for a mathematical calculation.

A. That would be 6 per cent. on $434,000. or whatever it is.

2. How much would that increase the cost per thousand cubic feet, taking into consideration the value of the residuals and the interest allowed to investors and the amount allowed for depreciation at 6 per cent. per annum?

A. That would be $43,400. and fifty million feet of gas divided into that would make it 87 cents a thousand.

3. That would increase the price 87 cents would it?

A. Yes.

4. Making the cost of gas to consumers $1.73 per thousand?

A. $1.76.

LEONARD KELLOGG, called on behalf of complainant, being first duly sworn, testifies as follows:

Direct interrogatories by Mr. IRWIN:

1. State your name, age and residence?

A. Leonard L. Kellogg; 45; Sioux City, Iowa.

2. What business are you engaged in?

A. Gas and electric light business.

3. How long have you been engaged in the gas business?

A. I have been connected with gas works for 30 years; of course, my early start was as an office boy.

4. What several positions have you held in gas companies?

A. Office boy, book-keeper, foreman, superintendent and manager.

527 5. What different plants have you been connected with during your experience in the gas business?

A. Ironton, Iowa, Galena, Ill., Nebraska City, Neb. and Sioux City, Iowa.

6. What different gas plants have you examined during your experience in the gas business outside of the plant you have named as being connected with as an officer or employé?

Objected to by defendant as immaterial and incompetent.

A. With quite a few of them; Des Moines, Iowa; Omaha, Neb.; Kansas City, Kansas; Lincoln, Neb.; Louisville, Ky.; Atlanta, Ga.; Savannah, Ga.—well I guess that is enough.

7. Are you familiar with the different processes entering into the manufacture of gas?

Ans. Yes sir.

8. What are the different processes in general use throughout the United States for the manufacture of gas to be sold through a general distributing system laid in the streets for illuminating or fuel purposes?

A. There are two prominent systems, viz: coal gas and carburetted water gas.

9. Are you familiar with the cost in the open market during the years 1899 and 1900 of the various items of machinery, apparatus, material and equipment, entering into the construction and operation of a coal gas plant?

Ans. Yes sir.

10. Will you please describe in detail, so far as you now remember, the various machinery, apparatus, material and equipment required in the construction of a modern coal gas plant, fully complete and ready for operation, with a capacity of about 500,000 cubic feet of gas per day, with reference to the buildings, machinery and other equipment constituting the manufacturing plant?

A. I should say, beginning with the retort house, it should
528 be occupied with 7 or 8 full depth regenerative benches with the necessary hydraulic main, stand pipes, exhaustors, tar separators, condensers, scrubbers, washers, purifyers, and ammonia apparatus, with the necessary buildings, boiler house, boilers, necessary pumps for handling tar, ammoni-cal liquor, storage holder, tar wells, ammonia wells, boiler tank, water pant for supplying water, coke and coal sheds, station meter with the necessary building, office meter, shop, pipe fitting dhop, storage shop, etc. In a general way, I think that covers it.

11. I will now call your attention to Exhibit "1" in evidence in this case, which purports to be a plan of the gas plant of the Peoria Gas & Electric Co. at Peoria, Ill. and will ask you to examine that plan and state whether or not it represents a proper plan for a modern up to date coal gas plant in your judgment?

Objected to by defendant as immaterial and incompetent.

A. It does.

12. Have you examined the plant of the Peoria Gas & Electric Co. in the city of Peoria?

Ans. Yes sir.

13. Are you familiar with its construction and equipment for the manufacture of coal gas?

Ans. Yes sir.

14. Will you describe in detail, so far as you now remember, the several buildings, machinery, equipment and apparatus contained in the manufacturing plant of the Peoria Gas & Electric Co.?

The MASTER: What is the use of encumbering the record with

that? Is there any question, Mr. Mansfield, but what Exhibit "1" is an accurate representation of the plant?

Mr. MANSFIELD: I don't know whether it is or not.

Mr. IRWIN: It is offered for the purpose of showing what knowledge the witness has of this plant.

A. The plant at Peoria, as I remember it consists of a re-
529 tort house with seven benches of 9's, full depth recuperative furnaces, occupied complete with the necessary stand pipes, hydraulic main, smoke stack, flues, etc., for generating coal gas; the gas goes from there, carried by the main, through the tar scrubbers, from there to the exhaustors and through the P. & A. condenser, then through the cylinder condensers, through the washers and scrubbers, from there to the purifyers and, as I remember, they are 24 x 24 feet, sufficient capacity in both purifying house, condensers and exhaustor rooms for another set of apparatus of the same kind; from there to the station meter and from there to the holder.

15. I will ask you if Exhibit "1," shown you, fairly represents the general plan of the plant of the Peoria Gas & Electric Co. as examined by you?

Ans. Yes sir.

16. Are you acquainted with the general location, size, improvements and topography of the city of Peoria?

A. In a general way, yes sir.

17. Assuming that the population of the city of Peoria and territory tributary thereto, where this plant is located, was about 65,000 inhabitants in the summer of 1899, what, in your opinion would be the size, nature and character of a coal gas plant to be constructed in said city?

Objected to by defendant as immaterial, incompetent and because no proper foundation has been laid showing the qualification of the witness.

A. All things considered, I should say a plant of 500,000 feet per day.

18. Assuming the premises aforesaid would the plant of the Peoria Gas & Electric Co., as examined by you, in your judgment be a proper and economical plant to have been constructed in the city of Peoria during the year preceding September 1, 1900?

530 Objected to by defendant same grounds.

A. Yes sir.

19. What is the nature and character of the plant of the Peoria Gas & Electric Co. with reference to its manufacture and delivery of gas economically, considering the location and conditions in the city of Peoria?

Objected to by defendand same grounds.

A. I should say it was very well located and very well adapted for the size of the place—the plant and all.

20. Are you familiar with the cost during the years 1899 and 1900 of the various items of labor, machinery and materials entering into the construction of a gas plant of the capacity and character of the plant of the Peoria Gas & Electric Co.?

Ans. Yes.

21. From your examination of the plant of the Peoria Gas & Electric Co. and from your knowledge of the cost of the construction of similar plants, are you able to state what would be the reasonable cost price of the plant and mains of the Peoria Gas & Electric Co. in the city of Peoria?

A. Yes sir.

22. Assuming that common labor could be employed in Peoria, during the year preceding September 1, 1900, at $1.50 per day, from your examination of the Peoria Gas & Electric Co. and from your knowledge of the cost and price of labor, machinery and materials, please state what in your opinion would be the reasonable cost of the construction of said plant, fully equipped, tested and ready for the delivery of gas to consumers, assuming that said plant was contracted for and erected during the year preceding September 1, 1900, and excluding from your estimate the cost of the real estate, also excluding the cost of mains and services and other extensions outside of the construction and equipment of the manufacturing plant proper. Give items in detail so far as you can.

531 Objected to by defendant as immaterial, incompetent and also because the witness has not shown what materials entered into the construction of the various buildings of the Peoria Gas & Electric Co. in the city of Peoria.

A. May I refer to my note book?

23. You can refer to any memoranda that you have made in order to refresh your recollection.

A. How much detail would you like?

24. As much as you please. Take the afternoon to it, if you desire, but confine yourself to the manufacturing plant.

A. Yes I understand that (witness referring to memorandum) The retort house is 107 x 42, walls 32 feet above ground, 18 inches thick at base, 16 x 12 inches above that, 12 inch pilasters with a tile roof supported by a steel frame. I estimate the cost of that at $9,000. Seven full depth benches, 9 retorts to each bench, retorts 16 x 26 x 9 including hydraulic main, stack, foundation, etc., $25,000. Boiler house, purifying house $15,000.—that includes the boiler house and purifying house. Two boilers, 66 x 18 with settings $3500. Ammonia apparatus $2600. Oil and enriching bench $1800. Two dry condensers $2500. Two exhaustors $2000.; one P. & A. tar extractor $400.; one tar separator $300.; two water condensers $2500.; one washer $1000.; two scrubbers $2500. nine pumps $2000.; 2 purifyers, 24 x 24, $6000.; one center seal $1100.;

one carriage for purifying lids $1200.; one conveyor for purifying material $1000.; one station meter house $1000.; one 10 x 10 foot station meter & connections $8000.; one meter shop, office building, store room, etc., $5000.; one three hundred thousand foot gas holder with steel tank $32,000.; tar and ammonia wells $3000.; photometric and chemical apparatus $1000.; Connelly automatic governor and connections $1500.; gas mains and valves of outworks $4500.; gas, steam, water, sewer pipe, tools, etc. $5500.; one
532 water tank, nap-tha feed tank, and water wells $5000.; coke and coal sheds $12000; add ten per cent. for superintendence $14,000., making a total of $166,440.

25. Assuming the premises aforesaid as to the cost of ordinary labor during the year preceding September 1, 1900, and assuming that the Peoria Gas & Electric Co. laid and constructed the following mains in and through the several streets and avenues in the city of Peoria during that year as follows, to-wit:—1758 feet of 16 inch mains, of which 160 feet is under pavement; 20768 feet of 12 inch mains of which 11225 feet is under pavement; 3482 feet of 10 inch main of which 58 feet is under pavement; 20,224 feet of 8 inch main of which 13234 feet is under pavement; 12874 feet of 6 inch main of which 5474 feet is under pavement; 80,852 feet of 4 inch main of which 9792 feet is under pavement, 260 feet of 2 inch main, making a total of 140,223 feet of main of which 39943 feet is under pavement; and assuming that 90 per cent. of the pavement referred to is brick pavement laid upon a 6 inch concrete foundation and asphalt pavement laid upon a 6 inch concrete foundation, what in your judgment would be the cost of the mains if laid during the year preceding September 1, 1900, including the repaving and repairing of the pavement disturbed and of refilling and other work incident and the cost of the material and laying of the mains connected with the plant of the Peoria Gas & Electric Co.

Objected to by defendant because no qualification has been shown by the witness as to his knowledge of the cost of mains laid down in the city of Peoria and no qualification has been shown as to the cost of relaying the pavement under which pipes are assumed to have been laid.

A. I would say it would cost $128,507.35.

26. Have you made a computation as to what the amount of mains mentioned in my preceding question would cost under
533 the circumstances there named?

Ans. Yes sir.

27. In estimating that cost did you take into consideration any extraordinary conditions in the streets such as rock, hard pan, or other extraordinary conditions in the laying of mains?

A. No sir, I assumed it was ordinary conditions from what I could see when there.

28. Assuming the premises aforesaid as to the cost of ordinary labor, and assuming that the Peoria Gas & Electric Co. had on Sep-

tember 1, 1900, the following services connected with their main system, viz:—three 3 inch services of a total length of 872 feet; 2 2½ inch services of a total length of 374 feet; 652 2 inch services of a total length of 37244 feet; 1503 1¼ inch services of a total length of 111369 feet; 266 1 inch services of a total length of 29393 feet, making a total of 2426 services of a total length of 179252 feet, what in your judgment, from your knowledge of the cost of labor and material for such work, would be the actual cost of those services laid into the premises of consumers?

Objected to by defendant as immaterial, incompetent and because the witness is not shown to have any knowledge of how much such labor would cost or as to the cost of material that entered into the placing of the services in the city of Peoria?

A. I would place the cost at $44,286.04.

29. Assuming that on September 1, 1900, the Peoria Gas & Electric Co. was the owner of 1758 meters purchased new during the year preceding September 1, 1900, what in your opinion, would be the fair and reasonable cost of setting said meters, settings and connections, in the premises of consumers for the measuring of gas?

Objected to as immaterial, incompetent and because the witness has not shown any knowledge as to the cost of labor entering into the setting of new meters in the city of Peoria.

A. $19994.80.

534 30. Assuming that the fair market value of the real estate upon which the plant of the Peoria Gas & Electric Co. in the city of Peoria is located was worth about $51,000., what, in your judgment, would be the fair market value of the plant, mains and equipment of the Peoria Gas & Electric Co.'s gas plant, including mains, services, meters, manufacturing plant and real estate on September 1, 1900; assuming further that said plant was constructed, mains and all equipments laid and completed, during the year preceding September 1, 1900, and that said plant was fully completed on May 1, 1900, and commenced the manufacture and delivery of gas on that date, and on September 1, 1900, was manufacturing and delivering gas to consumers at the rate of about fifty million cubic feet per year on that date, what in your judgment, would be the fair market value of said plant, fully complete, as examined by you and as above described, assuming it had the mains, services and meters given you in the preceding question on that date, to parties in the city of Peoria desiring to purchase it and enter into the gas business, assuming that they had the right to manufacture and sell gas in said city.

Objected to by defendant as immaterial and incompetent.

A. Say $450,000.

31. Assuming that on September 1, 1900, the cost of ordinary labor in the city of Peoria was $1.50 per day, that stokers could be

employed at the rate of $65.00 per month, head stoker at $70. per month, that gas coal could be delivered at the plant of the Peoria Gas & Electric Co. in the city of Peoria at $2.80 per ton, and assuming that said plant had been in operation for four months and was manufacturing and selling to consumers at the rate of about fifty million cubic feet of gas per annum on that date, from your experience in the gas business, from your knowledge of said plant
535 and your investigation thereof, are you able to state what would be the fair cost price of gas per thousand cubic feet delivered to consumers on that date, excluding from your estimate any depreciation on the plant and interest on the investment and also excluding the value of all residuals resulting therefrom?

Objected to by defendant as immaterial and incompetent because no proper qualification has been shown.

A. Yes sir.

32. On the premises stated in the preceding question, state what in your opinion would be the actual cost to the company per thousand cubic feet of coal gas delivered to consumers by the Peoria Gas & Electric Co. from its plant in the city of Peoria?

Objected by defendant same grounds.

A. I should say 90 cents.

33. What elements enter into the depreciation of a gas plant if you know, from your experience and observation in that business?

A. The elements entering into depreciation would be the rusting out of the mains, services, meters, etc.; the pitting and rusting of the holder and other iron work around the works; the action of electrolysis: the loss of pipes from being laid in streets that are graded where they are covered up so deep it would not pay to take them up when necessary to be relaid. I believe that would cover the ordinary depreciation.

34. Is there generally ordinary wear and depreciation of buildings, machinery and apparatus throughout a plant?

A. Yes sir.

35. In what manner, from your experience and observation, does good business policy require this depreciation to be taken care of by a gas company?

Objected to by defendant as incompetent because no proper foundation has been laid showing the qualification of the witness.

536 A. The only safe way is to set aside a fund of so much per year for taking care of it.

36. What percentage, if any, upon the cost of a gas plant, exclusive of the cost of the real estate, in your opinion, should be set aside annually with which to take care of this depreciation concerning which you have testified?

A. I should say 5 per cent.

37. Do you mean 5 per cent. of the total cost of the manufacturing

plant, mains, services, meters and all matters entering into a manufacturing plant, its offices and other equipment exclusive of the real estate?

Ans. Yes, sir.

38. Is it customary among gas companies to set aside from their gross receipts or earnings, an amount annually to take care of this depreciation you have testified about?

Objected to by defendant as incompetent because no foundation has been laid qualifying the witness on that point.

A. I could not answer as to the general question for I don't know.

39. Is this depreciation, you have testified about, a proper matter to be taken into account as to the cost of gas delivered to consumers by a gas company?

Objected to by defendant same grounds as before.

A. Yes, sir.

40. Is the amount you testify to that should be set aside to take care of the depreciation that was mentioned in your previous testimony, necessary in your opinion to be set off to take care of the depreciation which results to a gas plant?

Objected to by defendant same grounds.

A. Yes, sir.

41. What distinction do you make, if any, between de-
537 preciation concerning which you have testified, and repairs to the plant?

A. Repairs to a plant would include such items as were necessary to keep the machinery and apparatus, mains, etc., in working order, keep them so they will do their work; that would be called repairs up to the point where it was necessary to abandon the machinery, apparatus, or whatever it was, and when that time came and it was abandoned it would be a depreciation; there would be that much of the property of the company gone.

42. Is this 5 per cent. depreciation you have testified to as resulting to a gas plant exclusive of this account for repairs you mention?

Ans. Yes sir.

43. What are the hazards assumed by an investor in investing in the gas business?

A. Some of them would be as follows:—Explosions, personal injury, competition by other plants, other systems of lighting, gas or electricity, or new inventions that might, and has in the past made old apparatus worthless; political agitation which might carry with it State and city legislation. Those are the particular items I think of now that might be called hazards of the business.

44. Are the hazards to the business mentioned by you entirely aside or different from the depreciation named?

A. Yes sir.

45. From your experience and observation in the management and investigation of gas plants, are you able to state what would be a reasonable and fair return to investors, taking into consideration the hazards of the business on account of competition and the other hazards, concerning which you have testified?

A. I can state my opinion.

46. What in your opinion would be a fair and reasonable return to investors upon the cost of a gas plant, taking into consid-
538 eration the hazards to the business?

Ans. 10 per cent.

(The MASTER:)

47. Do you mean 10 per cent. in addition to the 5 per cent. charged off annually for depreciation?

A. Yes sir.

(Mr. IRWIN:)

48. What is the highest candle power of coal gas deemed as most efficient for ordinary use by consumers?

A. 18 candle power.

49. Measured where?

A. At or near the works.

50. Is it practicable to manufacture and deliver at the place of consumption a coal gas of a uniform 18 candle power throughout a city?

Objected to by defendant as incompetent and irrelevant.

A. No sir.

51. Can a satisfactory coal gas be manufactured and delivered at the point of consumption in a city of the size and character of Peoria at not less than 18 candle power?

A. I should say no.

52. Why?

A. There are a good many reasons why, the most important one would be that the candle power would fall off in traveling long distances through pipes by the deposit of the heavier portion of the gas.

53. Would it have to be manufactured at a higher candle power than 18 in order to be delivered at the point of consumption at that candle power?

A. Yes sir.

54. Why is it not practicable to manufacture a coal gas for general use at a higher than 18 candle power?

A. It would not be satisfactory for lighting on account of
539 smoke; the least draft would cause it to smoke.

55. And would it be practicable to do so and render satisfaction to the consumer?

Ans. No sir.

56. I mean confining it to coal gas?

A. No sir.

Cross interrogatories by Mr. MANSFIELD:

1. So far as 18 candle power coal gas is concerned, if it has 18 candle power at the point of consumption would you notice any smoking or anything else on that account?

A. That would depend, if you had ideal conditions you might not, but you hardly ever have them.

2. You could manufacture coal gas and raise it to such a candle power that at the point of consumption it would practically be 18 candle power, could you not?

A. I don't believe you could with all coal gas.

3. Well, you use enrichers?

A. Yes by means of an enricher you could do it.

4. You stated you were in the employ of the Ironton Gas Co?

A. Yes sir.

6. In what capacity were you in its employ?

A. In various capacities from office boy up to superintendent of the works.

6. How long were you there as superintendent of the works?

A. I think I was there about 10 years the last three of which I was superintendent of the works.

7. What kind of gas did they manufacture there?

A. Coal gas exclusively.

8. How long were you at the gas works in Galena, Ill. and in what capacity?

A. I was manager of the works for six months; I went
540 there to reorganize the works.

9. Was that a coal gas plant exclusively?

Ans. Yes, sir.

10. How long were you at Nebraska City, Neb., and in what capacity?

A. As manager and superintendent two years.

11. You went from there to Sioux City—how long have you been in Sioux City?

Ans. 16 years I think.

12. Then you have been in the business as a manager for gas plants for about 21 years?

A. Yes, about that.

13. When did you examine the plant of the Peoria Gas & Electric Co.?

Ans. A week ago last Monday.

14. Upon whose solicitation did you examine that plant?

A. Mr. Little's.

15. Did you read any of the evidence heretofore given in this case previous to testifying here?

Ans. Yes, sir.

16. How long were you examining the plant of the Peoria Gas & Electric Co. at Peoria?

A. I think about 10 hours; from 8 o'clock in the morning until 7 o'clock at night on Monday.

16. What did your examination most mainly consist of?

A. It consisted in taking a list of the apparatus at the works, sizes of the buildings, and going through the works and checking them up—verifying them practically.

17. What kind of a roof is there on the retort house?

A. Tile roof.

18. How much did you calculate to be the cost of that tile roof?

A. I could not tell you offhand and I have not got the details here.

19. What is tile worth in the city of Peoria?

541 A. $15. a square laid.

20. What kind of material entered into the construction of the coke shed of the Peoria Gas & Electric Co.?

A. It is built of wood with a tar roof.

21. What kind of wood is it?

A. I could not tell you.

22. What was the value of that wood?

A. I did not figure the value of the wood; I figured it as erected.

23. Do you know whether it was first, second or third grade wood that entered into the construction of that building?

A. No I could not give you the grade; I would not say it was first grade and I am sure it was not third grade; it looks substantial.

24. In the brick buildings there—do you know what was the cost of the brick entering into the construction of those buildings?

A. No, I did not go into the details of that.

25. In basing your estimate of the amount that should be allowed investors on account of the hazards attending the gas business do you take into consideration the danger of explosion in the gas works?—supposing that was covered by insurance would you then take it into consideration?

Objected by complainant as incompetent, immaterial and not cross examination.

A. No sir.

26. If covered by insurance, how much then would you allow for the fact it was covered by insurance?

Objected to by complainant as assuming facts not proven.

A. I would not know how much to strike off because you cannot get insurance against explosions and I don't know how much it would be.

542 27. When they insure a gas plant, what do they insure it upon—what is the risk assumed by the insurance companies?

Objected to by complainant as incompetent, not the best evidence and no grounds for it as a hypothetical question.

A. Tornadoes or fire.

28. Suppose the Peoria Gas & Electric Co. expends the sum of about $8000. per year for insurance on its plant, what deductions would you make in the 10 per cent. allowed to investors on account of the payment of that amount of money per year by the gas company, if any?

Objected to as incompetent and not containing the necessary assumptions for a proper hypothetical question.

A. If the insurance was paid for fire and tornedo insurance I would not make any deduction; if it was paid for explosions or against political agitation I might make a little allowance.

29. If it were paid for the purpose of indemnifying the company against any loss or injury that might be sustained by any of the employés in and about the works, or by any stranger there, would you then allow any deduction?

Objected to by complainant same grounds.

A. No sir.

30. You stated in your cross examination that the cost of gas delivered to consumers as manufactured by the Peoria Gas & Electric Co. would be about 90 cents excluding the value of residuals, the amount allowed for depreciation and 10 per cent. interest upon the investment, I will ask you as a gas expert what would be the cost to consumers per thousand cubic feet for gas furnished deducting the value of residuals and allowing 6 per cent. for depreciation and 10 per cent. for a reasonable return upon the investment.

Objected to by complainant as immaterial and not cross examination.

543 A. What do you want me to take as the value of the plant?

Mr. MANSFIELD: The same as you did before.

A. Well, the value of the plant, under the question asked would be one thing while the cost of it might be another; four hundred and fifty thousand dollars is what I said the plant would be worth to a man who wanted to do business and make money after it was all completed and ready for business.

31. What figures did you use when you calculated it would cost 90 cents to the consumer?

A. I didn't use any figures on the cost of the plant.

Mr. RITCHER: Interest on the investment did not enter into that question on direct examination of the witness.

Mr. MANSFIELD: I am aware of that Mr. Ritcher.

32. Assuming that the cost of the plant was $434,000 about and that it manufactured fifty million cubic feet of gas per year?

A. $2.00 per thousand cubic feet if I have made no mistake in my figures.

33. From your knowledge as a gas expert, what, in your opinion, would be the cost of coal gas in the holder of the Peoria Gas & Electric Co. per thousand cubic feet, taking into consideration the fact that the bi-product of tar, ammonia and coke are extracted and sold, the tar for 5 cents per gallon, the ammonia for 8 cents per pound and the coke at an average price of $3.25 per ton; also taking into consideration that about 22 per cent. of the coke made is used in heating the furnaces and that gas coal cost $2.65 per ton f. o. b. in Peoria; also taking into consideration all expenses of the company in the manufacture of the gas up to the holder and all the revenues to said company obtained from the sale of residuals, coke, tar and ammonia, and basing your estimate on a daily make of 500,000 cubic feet of gas?

544 Objected to by complainant as immaterial, incompetent, not cross examination and involving assumptions not in the record and no proper basis for the hypothetical question.

A. About 20 cents.

34. How much upon the same assumption in your opinion would the cost be to consumers, of a like amount of gas furnished by the Peoria Gas & Electric Co.?

Objected to by complainant same grounds.

A. 70 cents.

35. What does the difference between the cost in the holder and the cost to the consumer represent?

A. The largest item is the distribution item.

36. What percentage do you calculate that on?

A. That would be about 27 cents a thousand.

36. What enters into the cost of distribution?

A. Distribution labor, repairing mains, distribution expenses, repairing meters, repairing services, tools, expense office, salaries, expense of collection and expenses generally.

37. In a new plant like the plant of the Peoria Gas & Electric Co., what would be the average expense for the repair of mains during the first five years of its existence?

A. It would be very small, but I never operated a complete new plant and could not say.

38. You say the cost of distribution would be 27 cents?

A. 27 5/100 cents.

39. What other cost enters into it?

A. The items of taxation, advertising, soliciting, giving away small appliances to promote the use of gas, extraordinary expense items including accidents and litigation which I put at 23 cents.

(The MASTER:)

40. Have those matters any fixed data you have last mentioned?

545 A. Nothing except the general experience and history of gas companies.

Re-direct interrogatories by Mr. ABBOTT:

1. You stated in answer to a question on cross-examination that it would be possible to produce coal gas having such a candle power at the works that it could be distributed through the mains and service pipes and have a candle power of 18 candle at the point of consumption by the use, in the manufacture, of certain enrichers. Is it not a fact if such enrichers were used so as to increase the candle power much above 18 candle at the works that the cost of the manufacture of the gas would be considerably increased above the figures which you have given as the cost?

Ans. Yes sir.

2. You also stated that you had read some of the previous evidence in this case. State whether or not the answers you have given with reference to the cost of the plant, cost of producing gas, amount of depreciation, the hazards of the business, and all your remaining testimony was based upon your investigation of the plant itself and your knowledge and experience in connection with the gas business in general, irrespective of the previous evidence in the case?

Ans. Yes sir.

3. You were asked, somewhat in detail, in regard to the cost of the brick, wood, etc., entering into the various buildings of the Peoria Gas & Electric Co.'s plant. State what method or system you used in arriving at the figures you have given as to the cost of the various buildings and appliances?

A. I am just completing works with a half-million feet capacity, just putting in the last piece of apparatus; I have been at it for several years and I have the cost of practically everything except the benches; the way I arrived at my figures was to make an allowance for freight and for the conditions different between

546 Peoria and here and without figuring the details or without finding out what the material was, I took our cost on practically the same things making the proper allowances, as I have stated.

4. Is there any well defined or well known figure which approximates the cost of such buildings by the cubic foot or cubic yard making such allowances for freight or other differences as there may be in the cost between cities in this part of the country generally?

Objected to by defendant as incompetent and not proper re-direct.

A. There is.

(By the MASTER:)

5. What is the price of ordinary day labor here?
Ans. $1.50 per day.

(The SAME:)

6. Is that the price you paid for labor on this plant you have j spoken of?
A. Yes sir, for what we term common labor.

(Mr. ABBOTT:)

7. If it were possible to procure insurance against loss by exp sions so as to remove that element of hazard to the business, and were so procured, what would be the effect of the procuring of su insurance on the cost of manufacturing and distributing gas —wou it increase or decrease it in your judgment?
A. It would increase it to the extent the insurance cost.

Adjourned until Thursday, December 19, 1901, at 10 a. m.

547 Cleveland parlor, Coates house.

KANSAS CITY, KAS.,
THURSDAY, *December* 19, 1901—10 a. m.

Parties met pursuant to adjournment.
Present: Same as before.

ISAAC N. KNAPP, called on behalf of complainant, being first du sworn, deposes and says:

Direct interrogatories by Mr. ABBOTT:

1. State your name, age and residence.
A. Isaac N. Knapp; am about 50 years of age and reside Omaha, Neb.
2. In what business are you now engaged?
A. I am engaged in oil producing.
3. Have you ever been engaged in the operation or constructio of gas plants?
A. Yes sir, for 15 years.
4. Are you familiar with the business of manufacturing and sel ing gas?
Ans. Yes sir.
5. What different positions have you occupied in connection wit that business?
A. The position of constructing engineer, assistant superintende and superintendent.
6. What training and experience have you had in the busine of the construction of gas plants or manufacture of gas?
A. In the construction of gas plants previous to that period I ha

experience in placing foundations and cement masonry and general construction work.

7. Of what organizations, associations or societies of gas men are you a member, if any?

A. I am a member of the American Gas Light Association; the Western Gas Association; the American Society of Mining
548 Engineers, and I am also a member of the Alumni Association of Stevens Institute, Hoboken, N. J.

8. With what different gas plants are you familiar, what gas plants have you visited and what plants have you constructed?

A. I am familiar with the Omaha plant, of which I was assistant superintendent and superintendent; I am familiar with the Kansas City plant here and I have carried on construction operations at Waterbury, Conn., and practically rebuilt the works at Yonkers, N. Y., and Paterson, N. J.; the 25th Ward works of the Philadelphia gas works; the works at Pittsburg, Pa.; Johnstown, Pa.—rebuilt a portion of those works after the flood; Johnston and Gloversville, N. Y.; Atlanta, Ga.; Toledo, Ohio; Jaynesville, Wis.; Des Moines and Burlington, Iowa.

9. As a part of such construction, are you familiar with the labor and general matters involved in connection with the placing of the mains and service pipes, having special reference to paved streets in the cities in which those gas plants have been constructed?

Ans. Yes sir, I have.

10. What are the two principal processes in general use throughout the United States for the manufacture of gas to be sold through a general distributing system laid in the streets for fuel and illuminating purposes?

A. Coal gas and carburetted water gas.

11. Have you examined the plant of the Peoria Gas & Electric Co. in the city of Peoria?

Ans. I have.

12. Will you please describe said works with reference to the buildings, machinery and equipment, constituting the physical manufacturing plant in a general way.

A. I went down across the railway tracks in a westerly direction and went into the works office and into the meter room and pipe
549 shop; then I crossed the alley in a westerly direction and went through the retort house, then southerly into the boiler house, condenser room, purifying house and the meter room; then through the coal sheds; walked around the holder and looked at it; looked into the pits where the overflows were, the different wells, ammonia well, water well and the oil storage tank.

13. Look at the plat now shown you marked Exhibit "1" and after examining the same, state whether or not it is a fair representation of the plant of the Peoria Gas & Electric Co. as you found the same to exist.

A. Yes sir, it is.

14. Are you acquainted with the general location, size, improv ments and topography of the city of Peoria?

A. Well, I was driven over the city and I had the promine points in the city pointed out to me.

15. Assuming that on September 1st, 1900, the population of t city of Peoria and the territory tributary thereto, was 65,000 inha itants, that said city of Peoria was located upon the westerly ban of the Illinois river, upon ground gradually sloping westerly for distance of about 1½ miles, and extending along the Illinois riv for a distance of 4 or 4½ miles, that the plant of the Peoria Gas Electric Co. was then located at about the center thereof on the ban of the river; you may also assume that on September 1, 1900, the was in the city of Peoria another gas plant owned by an indepen ent company, which said plant had been in operation for about years and had a capacity of about 500,000 cubic feet per day; yo may further assume that the plant of the Peoria Gas & Electric C was constructed during the year prior to September 1, 1900. Nou from your examination of the plat and the premises, what is you opinion of the plant of the Peoria Gas & Electric Co. in the city Peoria, with reference to its fitness and size, character an
550 equipment for the manufacture and sale of gas in said cit taking into consideration the element of future growth, et

Objected to by defendant as immaterial, incompetent and assum ing facts not shown by the evidence.

A. The layout of the plant seemed to me to be judicious and such a character as the circumstances warranted.

16. In your judgment, is it a modern up to date plant for the use and purposes for which it is intended?

Ans. It is.

17. Assuming the same premises heretofore given and also basing your answer on your own inspection of the premises, what in you judgment is the character, size, capacity and equipment of the plan of the Peoria Gas & Electric Co. with reference to judicious invest ment and outlay?

Objected to by defendant same grounds.

A. The outlay would seem to be warranted and the investment a fair one.

18. Assuming the premises heretofore given with reference to the size, location and character of the city of Peoria; assuming also that the wages of ordinary labor were $1.50 per day, that Youghiogheny coal could be purchased and delivered at the works at $2.80 per ton assuming further that at the same time there was a local market for coke at an average price of $3.25 per ton; that the tar bi-products could be sold at 5 cents per gallon; that the ammonia bi-product could be sold at 8 cents per pound; that cannel coal for enriching could be bought for $3.00 per ton, that gas oil for making water gas could be bought at 3¾ cents per gallon, that coke for water gas making

could be bought for $4.00 per ton and that the company was not bound by any requirement as to candle power of gas to be furnished, what in your judgment and opinion would have been more expedient, to have erected a coal gas plant or a water gas plant, and why?

551 Objected to by defendant as immaterial and incompetent.

A. Under the conditions given coal gas could be manufactured cheaper and it would be better, with the conditions existing there to build a coal gas plant.

19. Are you familiar with the cost during the years 1899 and 1900, of the various items of labor, machinery, and materials entering into the construction of a gas plant of the capacity and equipment of the plant of the Peoria Gas & Electric Co.?

A. Yes sir, I am.

20. From your examination, inspection and knowledge of the plant of the Peoria Gas & Electric Co., from your knowledge of the cost of the construction of similar plants and from your knowledge of the cost in the open market during the years 1899 and 1900, of the various items of machinery, materials, apparatus, equipment and labor,—assuming that ordinary labor could be had at the price of $1.50 per day—entering into the construction and operation of a gas plant of the capacity and character of the plant of the Peoria Gas & Electric Co., are you able to state what would be the reasonable cost price of the plant and mains of the Peoria Gas & Electric Co., assuming that said plant was constructed during the years 1899 and 1900, and that the various items of machinery, apparatus, equipment and labor were purchased in the open market?

A. Yes sir, I am.

21. Did you in making your investigation of complainant's plant pay such attention to the different buildings and apparatus that from that investigation and the premises assumed in this examination you are able to estimate the value of the different buildings and apparatus entering into the construction of that plant?

A. Yes sir.

22. Did you estimate the component parts of the buildings in detail, or did you use some system or method in connection
552 with your experience in the construction of similar plants, in determining the cost of the different buildings and apparatus.

A. Well, I was furnished a schedule of what there was there, that is, the size of the buildings and the size of the apparatus; I then, in order to verify the schedule took certain portions of it, measured it up, and checked it up and found the portions of the schedule I so checked up to be correct and I then estimated the cost of the buildings by their cubical contents of what in my experience I had found to be the actual cost of similar buildings erected under somewhat similar conditions.

23. Is that a fair and the usual method employed by contractors familiar with buildings and construction of that character?

A. Yes, sir, in my experience contractors in cities in making bids on work as a rule compare the work they are asked to bid on with similar work they have performed and in that way, where they have actually gone through and done the work and know what similar work actually cost, I believe make a fairer estimate on what the actual cost would be than if the actual brick were counted or the number of nails it takes and all that sort of thing.

24. From the premises heretofore given and from your inspection of the premises and your knowledge of the cost of the construction of similar buildings and appliances, and having reference to the fact that this construction and equipment was prepared and built in the year preceding September 1, 1900, what would you estimate the value of the retort house with operating floor and coke platform to be?

A. I estimate that at $11,500.

25. On the same basis, what do you estimate the value of the boiler house to be?

A. $3500.

553 26. On the same basis, what do you estimate the value of the purifying and condensing house?

A. $13,800.

27. On the same basis what do you estimate the value of the heater and governor room?

Ans. $1200.

28. On the same basis, what do you estimate the value of the works office, store room and shop building?

Ans. $5400.

29. On the same basis, what do you estimate the cost and value of the coal, coke and other sheds in the yard?

A. $13,000.

30. On the same basis, what do you estimate the cost and value of the 7 benches of 9 retorts each complete with foundation and stack?

Ans. $26,100.

31. On the same basis, what do you estimate the cost and value of 2 purifyers complete with pipe connections and conveyors?

A. $7800.

32. On the same basis, what do you estimate the cost and value of the condensing apparatus complete with foundation?

A. $14,000.

33. On the same basis, what do you estimate the cost and value of the ammonia concentrating apparatus?

Ans. $2400.

34. On the same basis, what do you estimate the cost and value of two 66 x 18 boilers complete with stack and connections?

A. $5000.

35. On the same basis, what do you estimate the cost and value of the holder, holder tank and foundation?

Ans. $32,000.

36. On the same basis, what do you estimate the cost and value of the station meter and connections?

Ans. $4000.

37. On the same basis what do you estimate the cost and value of the Connelly governor and connections?

Ans. $800.

37. On the same basis, what do you estimate the cost and
554 value of the oil bench for enriching with connections and foundation?

A. $3000.

39. On the same basis, what do you estimate the cost and value of the photo-metric and chemical apparatus?

Ans. $1000.

40. On the same basis, what do you estimate the cost and value of the sewer and sewer connections?

Ans. $1200.

41. On the same basis, what do you estimate the cost and value of the yard connections and valves?

Ans. $800.

42. On the same basis, what do you estimate the cost and value of the elevator and connections?

Ans. $1000.

43. On the same basis, what do you estimate the cost and value of the scales?

Ans. $1200.

43. On the same basis, what do you estimate the cost and value of the tar, ammonia and water wells?

Ans. $3500.

44. On the same basis, what do you estimate the cost and value of the oil tank, pit and connections?

Ans. $1000.

45. On the same basis, what do you estimate the cost and value of the pumps and connections?

Ans. $1500.

46. On the same basis, what do you estimate the cost and value of the tools at the works?

Ans. $2500.

47. On the same basis, what do you estimate the cost and value of the grading and fencing?

Ans. $1000.

48. What, then, is the total of your estimate of the cost and value of the manufacturing plant proper of complainant company?

A. $158,200.

49. When you were in the city of Peoria, did you go about the city with a view of ascertaining its general topographical character as to the streets, etc?

A. Yes sir, but before we went out after lunch, I was shown a map of the mains and a record of the mains which I examined very

carefully, went over them and saw they were well kept and
555 so far as I could judge they were perfectly reliable; then while we were driving around the city, I had pointed out to me the alleys where the pipes were run in the down town districts and we were driven out and shown where there streets had been paved beyond what they were paved when the mains were laid and was also driven around generally and the superintendent of distribution replied to any inquiries I made with regard to the character of the soil, etc.

(The MASTER:)

50. Who was with you at the time?

A. I don't remember the name of the superintendent of distribution but he was with me and also Mr. Summerville and Mr. Kellogg; the same Mr. Kellogg who testified yesterday.

(Mr. ABBOTT:)

51. Are you familiar with the cost of pipe such as is used for main pipes of gas companies in the open market and the cost of laying the same, assuming that ordina-y labor could be had at $1.50 per day during the year preceding September 1, 1900, and are you familiar with such additions to that cost as would be involved in laying pipes under paved streets?

A. Yes sir, I am.

52. Assuming that on September 1, 1900, the plant of the Peoria Gas & Electric Co. in the city of Peoria had mains laid in and through the streets and alleys of said city for the dictribution of gas as follows:—to-wit:—1758 feet of 16 inch main of which 160 feet is under pavement; 20768 feet of 12 inch main, of which 11225 feet is under pavement; 3482 feet of 10 inch main, of which 58 feet is under pavement; 20224 feet of 8 inch main, of which 13234 feet is under pavement; 12874 feet of 6 inch main, of which 5474 feet is under pavement; 80852 feet of 4 inch main, of which 9792 feet is under pavement, and 260 feet of 2 inch main, making a total of 140,223 feet of main, of which 39,943 feet is under pavement; and assuming that 90 per cent. of the said pavement is either
556 of brick or asphalt with a 6 inch concrete base; and assuming that ordinary labor could be had at $1.50 per day, what in your opinion, was the fair and reasonable cost of laying the mains of the Peoria Gas & Electric Co., including labor, materials, cost of repaving the streets and all other expenses incident to laying said mains ready for use.

Objected to by defendant as incompetent and based upon hearsay.

A. I estimated the total cost of the mains at $142,503.50. Now, I have placed a cost of $1.00 a foot on the 39,943 feet for repaving; in the part of the town where that paving is, in the bottom there, it is of a sandy nature and undoubtedly would require sheathing and I was told it did and that $1.00 a foot I estimate for the paving and

sheathing; I add that much to cover the cost of repaving and sheathing; the cost of the mains, after making allowance for freight, is the actual cost of mains that were laid during the years 1899 and 1900.

53. With the result which you have stated?

Ans. Yes sir.

54. Did you in estimating the cost of laying such mains include any estimate for unusual obstructions, such as boulders or rock which might have to be blasted?

Ans. No sir, I did not.

55. What would be the effect upon the cost of laying said mains providing that such obstructions were encountered in the course of the work?

Objected to by defendant as immaterial and incompetent because there is nothing in the evidence to show that any such condition exists in the city of Peoria.

A. Boulders that would require blasting, that could not be lifted out of the ditch with ordinary labor would add to the cost of course.

56. Your estimate, however, is without reference to such obstructions?

Ans. Yes sir

557 57. Assuming that on September 1, 1900, the Peoria Gas & Electric Co. had service pipes as follows, to-wit:—Three 3 inch services of a total length of 872 feet; 2 2½ inch services of a total length of 374 feet; 652 2 inch services of a total length of 37244 feet; 1503 1¼ inch services of a total length of 111369 feet; 266 1 inch services of a total length of 29393 feet, making a total of 2426 services of a total length of 179252 feet; and on the same assumption as heretofore with regard to the cost of ordinary labor during the year preceding September 1, 1900, will you please give an estimate of the fair and reasonable cost of the service pipe of the Peoria Gas & Electric Co. including labor, materials and all expenses incident to laying such services ready for use?

Objected to by defendant as incompetent and founded on hearsay evidence.

A. My estimate is $48,452.

58. Assuming that on September 1, 1900, the Peoria Gas & Electric Co. was the owner of 1758 meters purchased new during the year preceding September 1, 1900, what, in your opinion, would be the fair and reasonable cost of such meters together with the expense of setting the same for use.

A. My estimate is $17,846.50.

(The MASTER:)

59. What kind of meters?

A. The ordinary dry gas meter. My estimate includes the cost of the meter, the freight, before the meter is set it is also tested and

is sent out with cocks and lead connections with a shelf under it—my estimate includes everything complete ready for use. I am able to give those costs for the year 1900 from the average cost of a large number of meters.

(Mr. ABBOTT:)

60. What other element, if any, enters into the cost of the construction of such a plant?

558 A. The element of general supervision to prepare the plant and organize.

61. Is that a usual and customary element to be taken into consideration in determining the cost of such a plant?

A. Yes sir, it is.

62. What estimate do you place upon the cost of superintendence and organization?

A. I add 10 per cent. to my estimate.

63. Have you included in your estimate anything for the value of the real estate?

Ans. No sir.

64. Have you included in your estimate anything for office supplies and equipment?

Ans. No sir.

65. Have you included in your estimate anything for the legal organization of the company, the canvassing and soliciting and other expenses incident to the legal organization of the company before it commenced to do business?

A. The 10 per cent. I mentioned is for the legal organization, the preparation of drawings and general superintendence but it is not for soliciting business.

(The MASTER:)

66. Is that a necessary item of cost in the construction of a plant of this character?

A. The organization?

(The SAME:)

67. The 10 per cent.?

Ans. Yes, it is quite customary.

(The SAME:)

68. Is it necessary?

A. You have to have some head to the thing to get it together.

(Mr. ABBOTT:)

69. Is it not customary in all work in which labor and materials are involved to add practically 10 per cent. for the cost of superintendence?

A. Yes sir, it is where the thing is put in at the cost.

559 70. Would it make any difference in your estimate in that regard whether the work was done under outside supervision and contractors or was actually in charge of the company's officers themselves?

A. If it were actually in charge of the company's officers themselves, there is nothing that would be charged for the supervision of the company's organization or office to the contract price of the work, or to doing the different portions of the work, but the 10 per cent. would come in the general superintendence.

71. I believe you stated you did not include anything in that estimate for advertising, soliciting and expenses of that kind for the procurement of business, getting the plant into operation?

A. No sir, that is not part of getting the thing together, that is after the thing is together to get the business.

72. Then excluding the value of the real estate and the expense attending the advertising, soliciting and general expense of office equipment, etc., what is the total of your estimate as to the cost of the plant of the Peoria Gas & Electric Co. as the same existed on the 1st day of September, 1900?

A. $403,701.10, that is, with the 10 per cent. added; my total net estimate is $367,001.00.

73. Now, assuming in connection with your previous answers that the plant of the Peoria Gas & Electric Co. was put in operation for the manufacture of gas to consumers on May 1, 1900; and assuming further that the cost of the real estate upon which said manufacturing plant is located was $51,000., and that the cost of the legal organization of the company, the equipment and organization of its business force, cost of advertising, solicitors, etc., and the general expense of putting the plant into operation, was $42,000., and that on September 4th, 1900, after about 4 months of
560 operation, it was manufacturing and selling gas to consumers at the rate of fifty million cubic feet per annum, what, in your opinion, was the fair market value on September 4, 1900, of the manufacturing plant, mains, services, meters, office equipment, books, services tools and equipment of every kind which might properly be considered a necessary part of its plant, assuming in answering this question, that said plant so existing and in operation was then sought to be purchased by parties having the need of such a plant, and having the right to operate the same, and excluding from your estimate of market value, any value that might lie in the license or franchise of the company?

Objected to by defendant as immaterial, incompetent and based on assumptions not disclosed in the record.

A. I place the value at not less than $450,000.

74. That in your opinion was the fair market value of the plant as it stood on that date under the assumptions given you in the previous question?

Ans. Yes sir.

(The MASTER:)

75. Do you arrive at that conclusion from your own personal investigations, or from your information as to what the plant cost the company?

A. I might say I consider both sides of the question, but I consider it more from the construction side because my experience has been more on that side. The plant is certainly worth that to anyone that has use for it.

(Mr. ABBOTT:)

76. Assuming that the Peoria Gas & Electric Co. commenced the actual manufacture and delivery of gas to consumers about May 1, 1900, was it in your opinion on September 1, 1900, in smooth and practical operation and running to the extent of the economies of which it was capable?

A. Yes sir, 4 months should bring it into good smooth operation.

531 77. Assuming that the Peoria Gas & Electric Co. commenced the manufacture and delivery of gas to consumers on May 1, 1900, and assuming further that the character of the plant and the lengths and character of its mains and services conform to the premises heretofore stated, that the cost of Youghiogheny gas coal at the works of the company was $2.80 per ton, that the wages of labor were $1.50 per day for ordinary labor, $65.00 per month for general stokers and $70.00 per month for the head stoker; and assuming further that the purchase of materials is general and the expenses of general operation fair and reasonable, considering the location of the plant and that the management and superintendence of the plant was efficient and competent; and assuming further that said plant had been in operation a sufficient length of time to put into smooth operation the economies of which it was capable, and that about September 1, 1900, it was manufacturing and selling gas at the rate of 50,000,000 cubic feet per year, what, in your opinion, would be the actual cost per thousand cubic feet of the gas manufactured and delivered to consumers by said company, excluding from your estimate the value of residuals and excluding also any charge for depreciation or interest on the investment?

Objected to by defendant as incompetent and assuming facts not shown by the evidence.

A. 87 cents.

78. What is the highest candle power in coal gas deemed most satisfactory for general use by consumers?

A. From 16½ to 18.

79. Measured where?

A. The candle power of gas is usually measured at or near the works; we always have, however, at different parts of the town jet photometers that give us the candle power of the gas; 18

562 candle power at the works would average delivered to the consumer between 17 and 18.

80. What are the causes which reduce the candle power of gas between the works and the point where it is delivered to the consumer?

Objected to by defendant as immaterial and incompetent.

A. Changes in temperature and friction in the pipe.

81. What is the objection to the use of coal gas of more than 18 candle power at the works?

A. The increased cost and as soon as you get a higher candle power you have to change your burner, get a better burner for the consumer.

82. Why is that—in other words what happens?

A. I becomes smokey; you have to have a special tip; you can see that in cars where they have oil gas they have to have a special tip and special conditions to burn that rich gas.

83. Assuming the premises heretofore given with reference to the cost of labor and material in the city of Peoria, would it be possible, in your opinion, for the Peoria Gas & Electric Co. to furnish gas to consumers in said city at the price of 75 cents per thousand feet without entailing loss upon the company, even allowing nothing for depreciation or interest on the investment?

Objected to by defendant unless the question is based upon a certain amount of gas manufactured?

A. They could not do it under the conditions and with that size plant.

84. From your experience, knowledge and observation of the gas business, especially in relation to the construction of plants, laying of mains, etc., please state what elements, forces and causes, if any, tend to depreciate a gas plant and its mains, services and equipment under the ordinary conditions which exist in all cities having a population of about 50,000 and upwards?

563

A. Commencing with the benches, the heat wears out the retorts and the changes in temperature destroys the stack after awhile; then there are gasses which arise from quenching the coke that rusts out the roof—the trusses; in a coal gas plant there are the ammonia fumes which sometimes are present and they are extremely bad on iron—starts it to pitting; there is the wear and tear incident to any revolving pieces you use in manufacturing, such as the engines, exhausters, pumps, etc.; there is the motion which wears out the piston rods; in the holder there is the moisture caused from the holder going down in the water and rising and the wind operates on the holder and sways it which wears out the guide pulleys; then in the mains, in a porous soil, there is the percolation of water that is acid which starts rusting and then there is electrolysis, which occasionally presents itself, sometimes in quite a serious form; in the services, the wear in the steel or wrought iron pipes is much more on services than it is on the cast iron pipes because the cast iron pipes are much thicker and do not rust so fast and the cast iron gets an

oxide over it which under certain conditions stops the rusting which does not occur in a wrought iron pipe; then the meters, they gradually wear out and the diaphragms rust out.

85. Is there a depreciation in the plant itself from the ordinary action of the elements?

Ans. Yes sir.

86. State if a change, or shifting of centers of population, renderdifferent size mains necessary at different portions of a city at different times, is an element in the depreciation of a plant?

A. Yes sir, it is; it becomes necessary sometimes to take out smaller mains and put in larger ones.

564 87. In what way would the growth of a city in general which might necessitate the enlargement of portions of the works, act as a depreciative element, if any?

Objected to by defendant as leading and suggestive.

A. That depreciates the works in this way; a station meter which is large enough, for instance, that had a capacity of 500,000 cubic feet a day, if you work it much above that it becomes unreliable and liable to be damaged and you have to replace it with a larger meter, one of a million cubic feet capacity; your street mains, governors, etc., as the business grows becomes too small and has to be duplicated; the exhaustor which will exhaust 500,000 feet a day will not exhaust a million feet and you have to duplicate it or take it out and put in a larger one.

88. I mean to distinguish in this question between such changes as are made in the way of normal extensions of mains into new territory, for instance, and such changes as might take place in the works, for example, where it becomes necessary to enlarge the retorts and benches and in consequence of that enlargement to enlarge the house in which they are contained, or construct a new one. You may state whether in your testimony with reference to depreciation you make that distinction between normal extensions and such changes at the works as might become necessary under the circumstances given?

A. The normal extension of mains is caused by the growth of the city in building up outlying districts; the enlargement of mains occurs from the increased consumption by the old retail districts becoming in many cases wholesale districts which don't require the consumption of gas that the retail districts do, or a retail district shifts to other streets and the streets which have been resident streets become business streets and larger mains are required

565 to be put in. In the works, a large amount of the apparatus is largely outgrown, it becomes too small, it may have been kept in repair and, if the consumption remains the same and the conditions the same, they would continue to do their work longer but under the conditions that arise from increased consumption you are obliged to take them out and discard them.

89. Could that be accomplished economically by a mere addition

to the plant, or would it be more economical to take the whole thing out and reconstruct it as intimated in your last answer?

Objected to by defendant as immaterial and incompetent and not based on any assumption of fact shown in the records.

A. A situation of that kind has to be gone into very carefully; I have in mind a works which within the last 4 years has been entirely abandoned, the city simply outgrew the works and they could not be extended, and although the works were in good operative condition and had been kept in good repair they had to be entirely abandoned, a new site sought and an entirely new works constructed simply because the city had outgrown the old works, and it was impossible to safely manufacture the quantity of gas required.

90. Why was it cheaper to abandon the old works and construct new rather than make extensions to the old works?

A. The cost of acquiring additional real estate at the old works was one very great objection and the apparatus could not be economically duplicated, that is, we could not add to it economically anyway, the thing had gotten too small.

91. Do you distinguish, as intimated in one of your previous answers, between repairs and the various elements of depreciation which ultimately result in renewal in the course of a few years of the entire plant, if so, define or illustrate further in what way
566 you distinguish repairs from this depreciation which ultimately results in renewal?

A. A repair is new packing for a piston rod, the piston rod in a pump gets cut up and it is a repair to put in a new piston rod, but when the pump becomes too small for its use, too small to take to your new works, it is left and becomes practically worthless—it is old iron; a repair is keeping the apparatus and things in good operating condition, but a renewal is where the apparatus is thrown to one side and an entirely new apparatus put in.

92. In what manner in your opinion does good business policy require this depreciation to be taken into account in conducting the business of a gas company?

A. Good business policy requires a sinking fund.

94. By sinking fund what do you mean?

A. Why, it is an accumulation of money laid aside yearly to take care of these renewals and increases.

95. What in your opinion would be a fair percentage of the cost of a plant, similar in character and equipment to the Peoria Gas & Electric Co., to be put into repairs annually on the average from year to year?

A. The repairs in a gas works are usually estimated on the basis of the output; it is put into the accounts; in a plant of the character of the Peoria Gas & Electric Co. I would say the ordinary repairs would amount to 5 cents per thousand on the output, I mean, if its

output is fifty million feet a year that 5 or 6 cents per thousand cubic feet would cover the cost of the repairs.

96. Is the amount you have stated, which should be laid aside every year as a sinking fund for the purpose of taking care of this depreciation and renewal, a proper element to be taken into consideration in determining the cost at which gas can be fur-
567 nished to consumers?

Ans. It certainly is.

97. Now, what in your opinion would be a proper percentage of the entire cost of the plant of the Peoria Gas & Electric Co., excluding the cost of real estate, to be taken into account annually as an average annual depreciation?

A. Not less than 6 per cent.

98. Aside from the general depreciation, of which you have testified, what are some of the hazards of the gas business as an investment, that is, some of the matters which should be taken into consideration in determining the income which an investor ought to receive from his investment in gas properties as compared with other investments?

A. Well, starting with the benches, there is the hazard of a man getting the heat run too high and melting down part of the bench, and there is the danger of loosing your seal, allowing the gas to escape in the works, causing an explosion; when you come to the holder there is an element of danger from tornado-s—a good many holders have been wrecked by wind storms like the storm at St. Louis and Brooklyn, N. Y.—the holders were wrecked by unusual tornado-s. In the street mains electrolysis constitutes a hazard because it occurs in such ways it seems impossible to locate it and the first thing you know you have a leakage which may lead to an explosion or the asphyxiation of people in houses; there is the changing of the grade in streets and sewer extensions—sometimes a city orders a sewer put in which goes below the water and gas pipes and a settlement takes place which causes serious loss, starting your pipes to leaking; then there are personal damage suits and newspaper and political agitation—nobody can figure on that.

99. How about competition from other forms of lighting and heating?

A. There are always new inventions coming out and we
568 cannot tell what there is before us; if the electric light people do what they claim they can upset the gas business pretty thoroughly.

100. How about the competition from oil?

A. The competition from oil comes in improved burners, and solicitors for gasoline stoves are very active.

101. How about natural gas—is that a hazard?

A. It has proven to be a hazard in many places.

102. When you speak of possible legislative action, or action of municipal councils, state whether you have in mind the possibility of franchises being granted to other competing companies?

A. Yes, sir; that is one of the things.

103. In that connection, would the fact that a gas plant is of value only as an entirety and that it cannot be moved from place to place as a stock of merchandise might be, also a hazard of the business?

A. Yes sir; it certainly is a hazard of the business; you cannot take your street mains up and take them away because it costs more to cut the paving than the pipe is worth.

104. Are all of these different elements, about which you have testified, to be taken into consideration in determining the income from an investment in gas properties, as compared, for instance, with the income from farm mortgages, or Government bonds?

A. You have to take that into consideration.

105. Taking into consideration the hazards and risks of the business, about which you have testified, and from your experience and observation in the construction and management of gas plants, are you able to state what would be a reasonable and fair return to investors, taking into consideration the various hazards on the investment, about which you have testified?

A. Not less than 10% on the total investment, including real estate. I have known gas companies, by one explosion, to be
569 put in the hands of a receiver to be sold out at sheriff's sale.

106. Are you familiar, in a general way, with the prices charged for gas in the cities of the United States of a population of 50,000 and upwards, and I will ask you further in that connection, that so far as your answer goes beyond your personal experience and investigation, state from what it is derived?

A. I know what the prices are in a few cities, and there is a directory of gas companies, called "Brown's Directory" which is considered among gas people as an authority and a reliable source of information as to the price of gas in different cities, discounts, stock etc., names of officers.

107. Is Brown's Directory a standard work of authority and recognized among gas men as such?

Ans. Yes, sir.

108. From your knowledge and observation, with reference to which you have testified, state in how many cities of 50,000 inhabitants and upwards in the United States, gas is sold to consumers at a less price than one dollar per thousand feet for lighting and fuel purposes?

Objected to by defendant as incompetent, immaterial and not tending to prove the cost of gas manufactured by complainant.

A. There is Pittsburgh, Penna., and Toledo, Ohio; then there is Cincinnati, Columbus, Dayton, and Cleveland, Ohio. I know personally as to the price in Pittsburgh, Columbus and Toledo; the others I don't know about personally; I simply know it is published in the papers and generally reported that way.

109. What conditions, if any, prevail in the cities you have men-

tioned as compared with the city of Peoria, which would tend to lessen the cost of the production of gas in those cities?

A. The cost of material is much less—I mean the coal; the works are larger and there is also a good price for the residuals—
570 they are easily gotten rid of in those places; then there is the competition they have with natural gas; they have very strong competition, particularly since the Wellsbach burner has come out; that burner enables natural gas people to furnish a satisfactory light; before that burner was introduced, the natural gas people were not able to give a satisfactory light and consequently the gas companies were able to live and get along.

Cross-interrogatories by Mr. MANSFIELD:

1. In making your estimate on the cost of the retort house of the Peoria Gas & Electric Company, what did you include in that estimate?

A. I included the walls of the building, the operating floor and roof.

2. Describe those walls?

A. I checked the measurement that was given me in this schedule with a steel tape and it was 107 feet 4 inches long by 42 feet 2 inches wide; a brick building, with gable roof, walls 32 feet above grade, 18 inches thick for 12 feet and 12 inches the balance of the height, with 16 inch pilasters spaced 13 feet apart; taking the inside dimensions of that building and its height gives me 130,000 cubic feet and taking that at 8½c. a cubic foot gives me $11,500. That was my estimate of the cost; the floor and the tile and the material that entered into that I did not go into in detail, but I do know that the tile on the roof is worth about $16 a square and the brick in the building costs about $6 a thousand and you would have to pay about a dollar a yard for the sand etc.

3. What did you include in your estimate on the brick boiler house?

A. I included the roof and walls with the dimensions given as to the foundation—6 feet deep; I took as a fair estimate because
571 that building had no floor in it, 8c. per cubic foot; the inside dimensions were about 43500 cubic feet and at 8c. a foot I put that down at $3500.

4. What did you estimate the cost of the foundation of the holder to be?

Ans. I estimated that was worth 15c. per cubic foot.

5. How many cubic feet entered into the construction of it?

A. Well, I have not got a memorandum of it here, but my recollection is it came to a little over $4000; I can figure it if you care to have it figured?

6. You need not mind about that. You stated upon certain assumptions the cost of gas to consumers in the city of Peoria manufactured by the Peoria Gas & Electric Company would be 87c., ex-

cluding from such cost depreciation and 10 % interest on the investment, and not deducting therefrom the value of the residuals, what in your opinion, would be the cost of the manufacture of the same quantity of gas under the same conditions as to the cost of materials and labor, in the holder of the company deducting from the cost of the manufacture of the gas the value of the residuals and adding to it the 6 % depreciation and 10 % interest?

A. Well, I estimate the net cost for the material and labor, ordinary repairs and supplies, at 22½c.; then to that, I would have to add what you have asked for: that, as I understand your question, would be 16 % on what I have testified to as the net cost of the works plus the 10 % for superintendence; with 10 % added to the net cost of the works I have a cost of $174.000; I figure the 6 % for a sinking fund and 10 % interest on the works amounts to $27.840; now, on fifty million cubic feet that would be per thousand 55 6/10; the cost of the gas in the holder, after you have sold your residuals, is 22½c.; that would make it 78 1/10c.

7. What would be the cost to the consumer of a like quan-
572 tity of gas manufactured under the same conditions?

A. I would have to add 43c. a thousand for an output of fifty million feet of gas; in the 43c. I include the 11c. taxation which would bring the distribution gas down to 32c.; the distribution gas includes setting the meters, repairs to mains, repairs to services, repairs to meters, soliciting new business, office expenses and salaries of officers.

8. What would that amount to?

A. 43c. and 11c. leaves 32c. as the total cost of distribution.

9. Then, as a gas expert, how do you account for natural gas being distributed in various cities in the country at from 15 cents to 25 cents a thousand?

Objected to by complainant as immaterial, not proper cross-examination and involving assumptions not in the record.

The MASTER: I don't think there is anything of that kind in the record.

10. Do you know of any cities in the United States where natural gas is being distributed and sold to consumers at from 15 cents to 25 cents per thousand cubic feet?

Mr. ABBOTT: Complainant objects to the question on the same grounds as before stated but will state that he will withdraw the objection to both questions if Mr. Mansfield will stipulate he will produce evidence of the cost of the distribution of natural gas on which assumption he is basing his question.

Mr. MANSFIELD: I am not making stipulations at this time.

A. At Butler, Penna., natural gas is sold at 15c. per thousand cubic feet, meter measure; in Pittsburgh it is sold for from 20 to 25 cents; I don't know the price it is sold in other cities; I do know that natural gas is sold in Columbus, Indianapolis, Toledo and it

A. The actual cost of the delivery of the gas at the burner.

The MASTER: What features in connection with it would you consider in determining that question?

Mr. RITCHER: The question is, what should be charged for gas irrespective of the return on the investment and renewal account?

The WITNESS: Why then, you would take into account the
579 actual cost of the material, labor and repairs to the plant; the repairs to the services, maters and mains—the actual cost of doing your business.

(Mr. RITCHER:)

13. State whether or not you consider depreciation an element which must be considered in determining the cost of gas in making a price to consumders?

A. It certainly should be considered and also the return on the investment should be considered; no one would invest anything unless they expected to get some return on it.

Re-cross-interrogatories by Mr. MANSFIELD:

1. When you place the money set aside for depreciation in the renewal account, when you issue the stock, do you take into consideration the fact that that money has been used in the betterment of the plant and calculate interest on that money since it has been put into betterments when you issue the stock?

A. That would depend upon the length of time this money had been carried in the betterment account; if the money had been carried say not to exceed three years in the betterment account, I don't think any interest should be allowed—I don't think that would be expected, but if you carry the betterment account for 5, 6, 7, 8, or 10 years, then certainly interest should be charged for every year whatever the betterments were for that year.

2. In estimating the cost of a plant you estimate interest during the period of construction on the total amount of the plant?

A. No, I would not; I would consider whatever interest on that would come in, would be paid out of that 10% for superintendence and organization.

3. Well, it would be there represented by your 10%?

A. Yes sir; it would.

4. What would be the cost of gas at the point of consump-
580 tion merely taking into consideration the 6% depreciation and deducting from the cost of the gas the value of the residuals upon the same basis you have heretofore testified to?

A. There is fifty million cubic feet a year and a $434.000 investment—$1.15 6/10.

The further taking of testimony was here adjourned by agreement, to meet at the directors' room of the Equitable Trust Company, National Bank building, #150 Monroe St., Chicago, Illinois, on Saturday, December 21, 1901, at 1:30 o'clock p. m.

Directors' room, Equitable Trust Company, National Bank building.

CHICAGO, ILL., SATURDAY, *Dec.* 21, 1901—1:30 o'clock p. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner; Mr. W. T. Irwin, Mr. E. C. Ritchie, Mr. W. T. Abbott, appearing for the complainant; Mr. Henry Mansfield, appearing for the defendant.

Adjourned by agreement to meet at Peoria, Illinois, in the United States court room, in the Government building, on Saturday, January 4, 1902, at 1:30 p. m.

580a *Second Annual Report.*

Water and light department, city of Duluth.

Duluth, Minn.
1900.

(EXHIBIT 12.) I. C. Pinkney.

580b *Second Annual Report of the Board of Water and Light Commissioners of the City of Duluth for the Eighteen Months Ending December 31, 1900, Together with the Report of the Manager.*

Duluth, Minn.
Christie & Collier Co., printers.
1901.

580c *Officers of the Department.*

Commissioners:

Charles A. Duncan, president.
Hansen Smith, vice-president.
Samuel F. Snively.
H. H. Martindale.
Giles Gilbert.

L. N. Case, manager and secretary.
J. S. Matteson, assistant secretary.
P. E. Johnson, superintendent mains and repairs.
W. Palmer, chief engineer pumping works.
W. Harper, chief engineer gas works.

580d *Report of the Commissioners.*

Water and light department.

DULUTH, MINN., *Jan.* 31, 1901.

To the honorable common council of the city of Duluth.

GENTLEMEN: In accordance with the requirements of the city charter, we hereby respectfully submit our annual report for the year ending January 1st, 1901. You will note that this report also goes back for six months previous to January 1st, 1900, thus duplicating our report dated January 18th, 1900, and covering the period from July 1st, 1899, to January 1st, 1900. This is done in order to make this report consecutive with the last printed report which was for the year ending June 30th, 1899.

We desire to call your special attention to the detailed statements of our manager and secretary, which are hereto attached. This covers the operation of the department as well as the receipts and expenditures. In it has been thoroughly covered in detail all the points and subjects that we thought might interest your honorable body.

The board desires particularly to call your attention and to discuss somewhat the subject of what is known as the construction fund of the department. Along this line we desire to state that, of the sum of $1,106,000.00 borrowed for the purpose of extending and improving the water and gas works of the city, there was expended through the common council $1,002,969.64, leaving a balance of $103,030.36. This last amount was placed to the credit of this board, to be used for the purpose for which it was intended, namely, the extension and improvement of the works.

Of this $103,030.36 the board has expended, in extensions and improvements, $78,679.33, and, in addition to that amount,
580e $484.95 has been used for repairs to the pumping works machinery, which, however, is chargeable to the builders of the pumping engines, the arrangement under which the same were built, being generally referred to as the Prescott contract. We have still left in this fund $24,351.03 with which to continue the improvement and further extension of the works.

All the resources left in the water and light plant fund, as well as all current bills receivable for gas and water, the inventory of all operating and repair materials on hand and already paid for, are accumulations of this department, with the only exception of the sum of $15,540.52 which accrued to the city as a bonus on the sale of these construction bonds. This latter sum is, however, credited to the interest account, but if considered as a part of the construction fund, it would increase the $24,351.03, before mentioned as the balance in that fund, to the extent of this $15,540.52, making the total amount in the construction fund of $39,891.55.

As evidenced by the manager's report hereto attached, the cash assets of the board on January 1, 1901, amounted to the sum of $85,280.47, leaving after deducting the $39,891.55 mentioned above, the sum of $45,388.92 as the accumulations of this department. Particular mention is made of this fact, because the gradual reduction of the balances in the water and light fund, caused through expenditures for improvements and extensions, have been used by some in criticising the statements made by this department, and pointed out as an evidence that the conditions were not as prosperous as our statements would indicate.

This construction fund will probably provide for construction, improvements and betterments of the plants for the coming two years, before which time it will be necessary for your honorable body to provide for the future, as this department cannot be expected to pay all its operating and maintenance expenses
580f as well as the interest on the bonds, and in addition provide for extensions and construction. While there has been no settled policy on the part of the city in regard to this matter of providing for extensions and improvements, we do not know that it has been advocated, nor do your commissioners believe it to be proper, that the earnings of this department should be used for that purpose. This would impose a much heavier burden upon the present consumers of water and gas than appears to be just.

We believe that the accumulations of this department should go towards reducing the cost of water and gas to the consumer.

It may be proper to enumerate here, in a condensed form, a few of the reductions that have been made in water rates since this department was created. The former minimum family rate of $9.00 per year for household purposes, being for one family in five rooms, with an additional charge of $1.00 for each room over the five, has been reduced to $6.00 per annum, with a charge of 50c. for each room above five rooms.

Baths, closets and wash basins for private families, formerly charged for at the rate of $5.00 each per annum, have been reduced to $3.00 per annum for the first of each of the above enumerated fixtures, and thereafter $2.00 per annum for each fixture, where there are more than one.

Where water was formerly furnished by meter, at the rate of 5c. for each 100 gallons, the rate is now 3½c.

The above, together with other reductions in water and gas rates, have aggregated the reduction in cost to the consumer about 33⅓ per cent.

By the table in our manager's and secretary's report, headed "For comparison," it will be seen that the earnings of this department for 1900 were increased over those of the year 1899 by the amount of $11,012.64. On the other hand, the expenditures for
580g operation and maintenance were only increased $5,811.34. This increase was largely due to the higher cost of coal, oil and other incidentals. It will also appear that the earnings of the

department exceeded the expenses for operation *for operation*, repairs and maintenance by the sum of about $10,000. This is after paying the interest on the bonds, which payment was in the amount of $111,200.00.

The efforts of your commissioners have been steadily directed toward the economical management of this department, without however, losing sight of the increasing demands of a growing business, and we trust that the results appear as satisfactory to the consumers, tax-payers and citizens generally as they do to us.

Very respectfully submitted,

C. A. DUNCAN, *President*,
HANSEN SMITH,
Vice-President,
SAMUEL F. SNIVELY,
H. H. MARTINDALE,
GILES GILBERT,
Commissioners.

Report of the Manager.

Water and light department.

DULUTH, *Jan.* 1, 1901.

To the board of water and light commissioners.

GENTLEMEN: In accordance with your regulations I respectfully submit my report for the year 1900, and, as also directed, submit in conjunction therewith a report for the last half of the year 1899.

The tables, showing the disbursements and receipts, as well as other calculations, are arranged in columns showing semi-
580*h* annual operations of each period by themselves, the two last being united in a fourth column so as to show the operations of 1900 complete.

The earnings of the department amounting to $173,187.80 are in excess of the operation and maintenance expense by $121,216.60. The latter expenses amounted to $51,971.20.

The earnings increased over those of 1899 by $11,012.64, and the expenses but $5,811.30.

The increased earnings of the gas department over those of 1899 amount in round numbers to $8,000, while the expense increased but a trifle over $4,000.

The increased earnings of the water department amount to over $3,000, while expenses were increased a little less than $1,800.

The increased expenses of both departments were largely due to the increased price of materials.

With the interest on the bonds, amounting to $111,200, added to the expenditures of the department, the excess of the earnings over the expenses amounts to $10,000, which, under the circumstances, I consider a most satisfactory result.

The following are the expenditures of the board arranged as previously stated:

580i *Expenditures.*

	July 1st to Dec. 31st. 1899.	Jan. 1st to July 1st. 1900.	July 1st to Dec. 31st. 1900.	Total, 1900.
Engineers and firemen	$2,785.67	$2,709.00	$2,865.91	$5,574.91
Coal	4,869.95	3,502.50	3,359.39	6,861.89
Oil	193.89	108.01	174.13	282.14
Misc. supplies	207.44	176.51	153.66	330.17
Misc. repairs	58.35	24.99	69.04	94.03
Pumping works, total	8,115.30	6,521.01	6,622.13	13,143.14
Office and shop pay rolls	3,322.44	3,836.75	3,805.00	7,641.75
Office and shop rent	340.02	370.02	400.02	770.04
Office supplies	318.03	362.09	377.52	739.61
Repairs, mach. and hyd'ts.	101.45	442.40	289.54	731.94
Repairs, mains and services	1,448.34	1,642.32	1,341.97	2,984.29
Repair, buildings	27.35	1.05	50.32	51.37
Insurance	27.50	24.75	41.00	65.75
Telephone	63.39	29.00	19.82	48.82
Water service, totals	5,648.52	6,708.38	6,325.19	13,033.57
Construction reservoirs	25.10			
Construction mach. & tools	147.18	267.53	812.84	1,080.37
Construction bldgs. & grounds	8,051.81	292.15	459.03	751.18
Construction mains	22,538.85	1,853.71	11,864.07	13,717.78
Construction hydrants	732.08	146.80	389.05	535.85
Construction cocks & boxes	343.48	582.23	297.74	879.97
Water construction	31,838.50	3,142.42	13,822.73	16,965.15
Aggregate forwarded	$45,602.32	$16,371.81	$26,770.05	$43,141.86

580) *Expenditures*—Continued.

	July 1st to Dec. 31st. 1899.	Jan. 1st to July 1st. 1900.	July 1st to Dec. 31st. 1900.	Total, 1900.
Aggregate forward	$40,602.32	$16,371.81	$26,770.05	$43,141.86
Engineers and firemen	1,318.12	1,448.76	1,611.47	3,060.23
Generator coal	1,935.08	1,912.92	2,800.47	4,713.39
Boiler coal	596.23	789.01	560.10	1,349.11
Misc. supplies	37.27	36.88	94.11	130.99
Misc. repairs	.68	84.37	79.51	163.88
Oil	2,579.59	4,055.28	3,442.73	7,498.01
Gas works, total	6,466.97	8,327.22	8,588.39	16,915.61
Office and shop rolls	1,709.14	1,858.10	2,134.50	3,992.60
Office and shop rent	169.98	184.98	199.98	384.96
Office supplies	214.40	327.24	233.60	560.84
Repairs, mach. and app's.	177.13	264.01	114.97	378.98
Repairs, mains and services	1,011.42	1,220.48	840.84	2,061.32
Repairs, meters	344.19	476.26	365.40	841.66
Repairs, buildings	40.51			
Insurance	2.50	194.27	9.25	203.52
Telephone	15.01	25.00	25.45	50.45
Gas services	3,694.28	4,580.34	3,923.99	8,474.33
Construction mach. & app's	3,691.77	17.24	225.55	242.79
Construction buildings	1,214.95	26.77	7.25	34.02
Construction mains	10,685.04	676.83	4,415.53	5,092.36
Construction meters	797.56	630.49	771.22	1,401.71
Gas construction	16,571.32	1,351.33	5,419.55	6,770.88
Aggregates forwarded	$72,334.89	$30,600.70	$44,701.98	$75,302.68

580*l* *Expenditures*—Continued.

	July 1st to Dec. 31st. 1899.	Jan. 1st to July 1st. 1900.	July 1st to Dec. 31st. 1900.	Total, 1900.
Aggregates forward	$72,334.40	$30,600.70	$44,701.98	$75,302.68
Water rates, annual	53.30	34.16	88.99	123.15
Water rates, meter	.....	.....	82.54	82.54
Prescott cont. construction	195.00	37.55	12.30	44.85
Real est. rev. and expense	60.88	9.40	.....	9.40
Gas rates	308.26	8.20	14.20	22.40
Meter deposits, gas	207.00	351.50	429.92	781.42
Service connections	1,610.85	1,266.23	1,764.76	3,030.99
Water meters	2,062.14	1,485.68	1,319.44	2,805.12
Stoves	639.13	1,172.30	794.28	1,966.58
Lamps	2,333.21	1,389.06	1,893.08	3,282.14
Aggregate expenditures.	$79,804.60	$36,349.78	$51,101.49	$87,451.27

580*l* *Operation and Maintenance Expenditures.*

The following table shows the expenses of the department that are due to the operation, repairs, and maintenance of the works entirely. By consulting the table it will be seen that these expenditures, for the first half of the year 1900, exceeded those of the last half by nearly $2,000, due almost entirely to the cost and character of the coal used:

	July 1st to Dec. 31st. 1899.	Jan. 1st to July 1st. 1900.	July 1st to Dec. 31st. 1900.	Total, 1900.
Pumping works	8,115.30	6,521.01	6,622.13	13,143.14
Water services	5,648.52	6,708.38	6,325.19	13,033.57
Gas works	6,466.97	8,327.22	8,588.39	16,915.61
Gas services	3,694.28	4,550.34	3,923.99	8,474.33
Water rates, annual	53.30	34.16	88.99	123.15
Water rates, meter	.....	.....	82.54	82.54
Real estate rev. and ex.	60.88	9.40	.....	9.40
Gas rates	308.20	8.20	14.20	22.40
	24,347.45	26,158.71	25,645.43	51,804.14
Add or subtract for materials on hand	— 1,550.34	+ 774.24	— 607.18	+ 167.06
Actual operating expenses.	$22,797.11	$26,932.95	$25,038.25	51,971.20

was sold in Johnstown, Penna.—I don't know whether it is sold there now or not.

573 11. What is the average life of gas plants throughout the Mississippi valley?

Ans. 12 to 15 years

(The MASTER:)

12. Do you include the city of Peoria in your answer?

A. Yes sir; I include the city of Peoria; that is the general experience; partly due to wear and tear and partly to the outgrowth of the plant.

(Mr. MANSFIELD:)

13. Then you mean to say that all the appliances connected with a gas works become either useless or worn out in the course of 12 to 15 years, do you?

A. I mean to say as a general proposition they would; in some cases holders have been in use much longer—25 to 30 years; in other cases they go to pieces much sooner from various causes; the original holders in one city I am acquainted with are all gone; the works were constructed, according to the records of the company, and put in operation from 1868 to 1869; the original works went out of use in 1883; now, third works—complete new works, were built in 1897.

14. Was that plant located in the Mississippi valley?

A. No, it was located in the Missouri valley; it is located in Omaha.

15. Did not the deterioration of that plant in Omaha occur from the flooding of the Missouri river?

Ans. No, sir.

16. When you estimate a sinking fund of 6% upon the total amount invested to be set aside, what do you do with that 6%?

A. I should reinvest it in improvements of the company—extension of mains and in betterments only.

17. Would those betterments be charged up to construction account?

A. No sir; they would be charged to a betterment account; that betterment account would not receive the 10% interest on the capital invested until such time as it was turned in stock,

574 that is when it becomes necessary to raise a large sum for betterments, that is, for renewals, then the sum that had been expended in betterment would be turned into stock and the stock sold and in that way you could get the money to make a betterment on.

18. Then you would not take into consideration the investment of this sum in betterments at all until you issued stock therefor?

A. Not in the way of payment of dividends, no sir;

19. When you were in Peoria how long were you there for the purpose of examining the plant of the Peoria Gas & Electric Co.?

A. I got there Sunday evening and left there Monday evening; with the assistance that was given me by the schedules furnished and the maps of the street mains shown me I was enable- to make to myself a fairly satisfactory examination; if I had not had those schedules to go by and had had to go and count up everything and measure it up and all that sort of thing it would have taken me quite a while to make the examination.

20. Then this examination you made was based on the information you obtained from the Peoria Gas & Electric Company?

A. No sir; the schedules were given me and I went and verified them so far as I was able to and it checked up every time.

21. To what extent did you verify the schedules?

A. I verified the schedule by measuring the outside dimensions of the retort house, the boiler house and the condensing room; I verified the height of the stack by counting the sheets and saw it was 80 feet high; I verified the number of retorts by counting them—the benches; I verified the condensing apparatus; I saw the ammonia apparatus was as represented in the drawing by the size of the boiler; I verified the extent of the enriching bench back of the boilers; I went and looked into all the tanks around and satisfied myself that the schedule that was presented to me was right; I saw no reason to question it.

575 22. You testified on direct examination from notes—did you prepare those notes yourself?

Ans. Yes sir; I did.

23. Where did you prepare them?

A. I prepared most of them in Omaha where I have some notes and have an engineer's pocket book with reference tables in it, and I have old correspondence which has the price of apparatus and such matters as that.

24. Are you familiar with the condition of the soil in the city of Peoria?

A. I saw the Illinois river there and saw that in the bottom there it was alluvial soil of a sandy character and in the back portions of the city I saw the soil up above the street level and could see it was a sandy loam, or may be more of a clay in its nature; from past experience I could judge about what the conditions would be in trenching there; according to my past experience in the down town districts sheathing would be necessary in digging trenches on account the sandy condition of the soil; when teams drive along on the pavement the sand works out and although you may dig a trench 23 or 24 inches wide, according to the size of the pipe, or 22 inches wide, you cannot figure on repaving just 22 inches wide for when you are ready to repave you may have a place four feet wide to repave.

25. How deep are gas pipes generally laid under pavement?

A. 3½ to 4 feet; in the city of Peoria I should expect to find them 3½ feet below the concrete.

Re-direct interrogatories by Mr. ABBOTT:

1. In these cities you have mentioned where natural gas is sold at a comparative low price, I will ask you if you know in a general way the volume of the consumption of natural gas in those cities as compared with the volume of consumption in cities of 50,000
576 inhebitants and upwards, where artificial coal gas is sold?

A. No sir; I do not; I have never had an opportunity to check the books up of any natural gas company and I don't know of any statement I could refer to that would be reliable.

2. What elements, in your judgment, tend to lessen the cost of the distribution of natural gas in those cities, if it is lessened?

A. The cost is lessened by reason of the higher pressure carried and the smaller diameter pipe used.

3. Do they have any expense for advertising, canvassing and soliciting as a rule in cities where natural gas is furnished, at least, to any extent, such as would be the case in connection with the furnishing of artificial coal gas?

A. So far as my knowledge goes I never knew of a natural gas company advertising its business in exactly the same way the artificial gas companies do.

4. What would be the expenses of advertising and soliciting in connection with an artificial gas company in a general way, if you know?

A. So far as my observation goes in cities where natural gas is distributed—take the city of Chanute, Kansas; they do absolutely no advertising or soliciting of business that I know of; in Butler Penna., I go there because I have a brother living there—I have seen his bills there which were 15 cents per thousand cubic feet, and I have talked with him and others in the city of Butler about the natural gas business at that place and so far as my observation goes there, there is absolutely no advertising or soliciting done at the present time.

5. How is it in connection with the furnishing of artificial coal gas; is there not a constant expense for advertising, soliciting and canvassing and other expenses for the purpose of obtaining new business constantly?

577 A. That is a pretty broad question, but in the sale of any manufactured goods it has become necessary on account of competition to solicit and advertise.

6. You testified on cross-examination with regard to the use which would be made of the sinking fund set apart to meet depreciation and future renewals, stating that that sum would be applied every year, or from year to year, to betterments and charged to a betterment account and, if I understood you correctly, when the proper time arrived, new stock would be issued to meet those expenses charged to a betterment account—That stock when issued would be paid for, would it not?

Ans. Yes sir.

7. And if I understood you correctly, when you testified as to the income of 10% to investors on the cost of the plant, you would not include this 10% as a dividend on this expense for betterments etc., until the new stock was actually issued and paid for?

A. Yes, that is it.

8. Now, in order that we may understand each other perfectly on the questions relating to the cost of coal gas to the consumer, I will ask you this question: Assuming a plant to be in active and economical operation on the 1st, day of September 1900, with an annual output of approximately fifty million cubic feet, and under the conditions as to the cost of labor and materials which have been given, what would be the cost price to the company of coal gas at the point of consumption deducting from such cost price the value of the residuals and including 6% on the cost of the entire plant for depreciation and 10% on the cost of the entire plant as a return to the investors, assuming the actual cost price and fair market value of the plant to be $434,000?

A. I have testified the cost delivered to the consumer would be 87c.

9. That was making no allowance for the value of the resid-
578 uals and not including anything for depreciation or interest on the investment. I now desire to deduct the value of the residuals and include the 6% for depreciation and 10% return to investors?

A. I make the value of the residuals 22½ cents; deducting that from 87 cents leaves it 64½ cents delivered to the consumer. Now, if the value of the works were $434,000 that 10% and 6% would be $160 a thousand; that would be $69,440 for a sinking fund and 10% on the $434,000 investment; and on fifty million feet it would be approximately $1.39 and 64½ cents to add to that would be $2.03.

10. If you were asked in a general way to determine the cost of gas delivered to the consumer would you determine that on the basis which I have just now given you?

A. If I wanted to get at the natural cost with a fair return on the investment I should certainly figure it that way; I do not consider that in the 10% that is paid on the investment they are going to get that every year, that is, they start out with the intention of paying 10%, then they may get an explosion, or something of that kind, and there would be a year or two they would not get anything on their stock.

11. In a general way your estimate, if I understand you, would be made up in that way?

Ans. Yes sir; it would.

Mr. RITCHER:

12. In your last answer you said you would figure up the cost on a fair return on the investment; if you were figuring up the cost alone what element would you consider for a fair return on the investment?

580*v* *Auxiliary Accounts.*

Service extensions, water meters, stoves and lamps are independent accounts to which is charged all expenditures for labor and materials, and which is credited with all receipts for the sale of the said materials. The prices charged for each are calculated as closely as possible to simply make these sub departments self-supporting; in other words, these materials are furnished at cost to the people. Inventories were made of stock on hand and bills receivable in each of these accounts on the 1st of January. As compared to the ledger balances, the inventories show what appears to be accumulations, but with the exception of the lamp account the several surplus are due to materials on hand when these accounts were opened and do not differ materially from the surplus reported July 1st, 1899.

These accounts are as follows:

Water meters.

Bills receivable	$362.44	
Invoice of materials	1,010.20	
		$1,372.64
Ledger balance		945.65
Surplus		$426.99

Service extensions.

Bills receivable	$1,136.95	
Invoice	904.47	
		2,041.42
Ledger balance		717.46
Surplus		$1,323.96

Gas stoves.

Bills receivable	$75.44	
Invoice	261.06	
		336.50
Ledger balance		225.84
Surplus		$110.76

580*w* Lamps.

Bills receivable	$607.49	
Invoice	668.93	
		1,276.42
Ledger balance		1,146.89
Surplus		$129.53

Service extensions.

Number of service connections made in 1900	138
Previously reported	2,292
In West Duluth system	365
Total	2,795

Water meters.

Net gain in number of water meters for 1900	173
Previously reported	1,098
Total	1,261

Gas meters.

Net gain of meters in use	215
Previously reported	1,519
Total	1,734

The aggregate gain in the number of meters in use since the purchase of the plant is 612

Lamps.

The sale of lamps and parts of lamps continues unabated. In the past two years the department has sold 2,846 complete lamps, the number of orders received and filled amounting to 4,778, or an average of 8 for each working day.

580*x*

Pipeage.

Jan. 1, 1901.

Water.

Size. Inches.	Cast iron. Feet.	Kalomine. Feet.	Wrought. Feet.	Changes in 1900.
3		550		
4	175	1,999		
6	106,063	5,310	2,320	Laid
9	12,135	3,588		8,922 ft. of 6 in.
10	10,000	3,787		1,056 ft. of 12 in.
12	18,364	2,624		180 ft. of 16 in.
16	27,108			
18	1,398			10,158 feet total
20	7,226			
36	11,880			Replaced
42	33,000			1,016 ft. of 4 inch.
Totals	227,949	17,858	2,320	

Aggregate—248,127 feet, or 45 miles and 2,520 feet.

Gas.

Size. Inches.	Cast iron. Feet.	Kalomine. Feet.	Changes in 1900.
2		378	Laid
3		5,023	5,728 feet of 4 inch
4	89,638	540	828 feet of 6 inch
6	35,039	9,126	——
8	5,185	462	6,556 feet total.
10	15,711	737	
16	4,361		Replaced
Totals	149,934	16,266	1,106 feet of 3 inch kalomine.

Aggregate—166,200 feet or 31 miles and 2,520 feet.

580*y* *Inventory.*

Jan. 1, 1901.

Water plant.

Original purchase of plant	$830,200.00
Original purchase of real estate	56,800.00
Expended by council on sup. system	818,169.64
Expended by board, Prescott contract	484.95
Expended by board, extensions, etc	51,706.11
Total valuation, Jan. 1, 1900	$1,757,360.75

Statement of Cost of Supplementary System Furnished by City Engineer.

Acquiring land	$7,678.96
Pump house, mill, etc	41,156.81
Pumping machinery	134,283.34
Intake	51,375.80
Steel main and rider, 33,00 of 42 inch	319,876.72
36-inch main, 11,880	87,812.04
Reservoir: capacity 13,500,000 G	71,849.43
Labor not classified	50,825.01
Engineering and inspection	23,955.83
Additional attorneys, bonds, etc	15,447.19
Total	$804,261.03
Expended by the board upon the houses at Lakewood, and in the improvement of the grounds and pump house	$9,323.60
Improvements to reservoir	223.35

Real estate valued at $56,800.

Descriptions are as follows:

Lots 6, 6, 7, 8 and 11, block 15, Endion division—pumping works and dwelling.

Lots 163, 165, 167, 169, block 66, Duluth proper, 2nd div.—old reservoir on West First street.

Lots 9, 10, 11, 12, 13, 14, block 22, Portland div.—old gas works site, East First street.

Lots 57, 58, 59, 60, 61, 62, 63, 64, block 98, Duluth proper, 3rd div.—upper system reservoir site.

Out lot R, Lester Park, 1st div.; London road—pumping works.

West 100 feet of block 105 N. E., 15th street—old reservoir.

Block A and part block B, Lester Park, 4th div. on lake shore —pump works site.

580: Original purchase, with improvements, valued at $772,359.16

2 engine houses.
1 engine, Holly-Gaskill; capacity 5,000,000 gallons.
1 engine, Worthington; capacity 3,000,000 gallons.
1 engine, Worthington; capacity 4,500,000 gallons.
1 engine, Blake; capacity 1,000,000 gallons.
1 engine, Blake, 375,000 gallons.
4 boilers, 3 tubular and 1 water tube.
184,800 feet cast iron pipe, 6 to 20 inch.
17,858 feet kalomine pipe, 4 to 12 inch.
2,320 feet wrought pipe, 6 inch.
1 reservoir; capacity 4,000,000 gallons.

Materials on hand.

2 horses, wagons, etc., etc	$591.35
Pipes, special v*la*ves, lead, etc	5,737.31
Implements and tools (extension department)	2,217.62
Pump works, tools and fittings	1,434.70
Office furniture and fixtures	675.00
Total	$10,655.98

Recapitulation of water plant.

Total valuation of plant	$1,700,560.75
Real estate	56,800.00
Materials	10,655.08
	$1,768,015.73

Gas plant.

Lot on Garfield at works	$20,000.00
Original purchase price of plant	343,000.00
Expended by board, extensions and improvements	26,992.00
Total	$389,919.00

580& 1 building—gas works.
1 double lift holder; capacity 200,000 feet.
1 single lift holder; capacity 7,000 feet.
1 Flannery generator (old).
1 new Lowe generator; cost $5,647.73.
149,934 feet cast iron pipe, 4 inch to 16 inch.
16,266 feet kalomine, 2 inch to 10 inch.
1,734 meters.
Engines, blowers, washers, purifiers, etc.

Office furniture and fixtures	$325.00
Meters and repair materials on hand	537.91
Tools and fittings	184.31
Total	$1,047.22
Making an aggregate of	$391,040.00

Auxiliary accounts.

Lamps, materials on hand	$668.93
Stoves, materials on hand	261.06
Service extensions, materials on hand	904.47
Water meters, materials on hand	1,010.20
Total	$2,844.66

Operation supplies.

Coal, oil, etc., pump works	$760.36
Coal, oil, etc., gas works	1,482.20
Total	$2,242.56

Recapitulation.

Water plant	$1,768,015.73
Gas plant	391,040.00
Auxiliary accounts	2,844.66
Operation materials	2,242.56
Grand total	$2,164,142.95

In conclusion I desire to express my warmest approval of the subordinate employees of the board, who, one and all, have shown throughout an earnest interest in the works, and are enthu astic over the gains made and the increase of the business. This
580*aa* increase has brought with it much additional work, but with the exception of one extra clerk in the office, drawing

a salary of $480 per annum, now increased to $600, the number of employés of the works remain the same as when the board assumed control of them.

The increase in the total of salaries paid for engineers and firemen at pumping works and gas works, and to office and shop rolls in 1900 over that of 1899 amounts to $1,666.52, and which has been caused by the above employment and by an increase in the salaries of a few of the employés, to make them in keeping and consistent with the general salaries and with the services rendered.

I think these men deserve the approval of their fellow citizens in whose interest they are working.

All of which is respectfully submitted.

L. N. CASE, *Manager*.

580*bb* Vol. 3, Schedule "B," Israel C. Pinkney, Special Master.

Filed Jun- 3, 1903. Marshall E. Sampsell, clerk.

581 UNITED STATES OF AMERICA, } ss:
State of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY } In Chancery. Volume 3.
vs.
CITY OF PEORIA. }

Index to Witnesses, Volume 3.

Names.	Direct.	Cross.	Re-D.	Re-cross.
Doherty, Henry L.....	582	597	623	
McDonald, Donald.....	626	647		
Gore, Edward E.....	669	673		
Robb, John M.....	677	691		
Little, Francis W. (re-called)..... ...	.....	700	736	739
Little, Francis W. (").....	740	775	792	794

Documentary Evidence.

Plat of mains, services, etc., p. 691—attached at close of evidence.

Extract from report of committee on streets and alleys—page 795.

Ordinance granting Newman franchise etc., attached end of volume.

Ordinance granting complainant the right to lay mains, etc.,—attached at end of volume.

Ordinance granting Peoples' Gas & Electric Co., the right to lay mains, etc.,—attached at end of volume.

Ordinance regulating and fixing maximum price of gas in city of Peoria,—attached at end of volume.

Testimony taken in the above entitled cause before Judge I. C. Pinkney, special commissioner, at Peoria, Illinois, on the several dates set forth in the following pages.

Mr. W. T. Irwin, Mr. E. C. Ritcher, and Mr. W. T. Abbott, appearing for the complainant.
Mr. Henry Mansfield, appearing for the defendant.

582 United States court room, Government building.

PEORIA, ILL., SATURDAY, *January* 4, 1902—1.30 p. m.

Parties met persuant to adjournment.
Present: Judge I. C. Pinkney, special commissioner, Mr. W. T. Irwin and Mr. W. T. Abbott appearing for complainant. Mr. Henry Mansfield appearing for defendant.

HENRY L DOHERTY, called on behalf of complainant, being first duly sworn, testified as follows:

Direct interrogatories by Mr. IRWIN:

1. State your name, age, occupation and residence?
A. Henry L. Doherty; 31; gas engineer; my local residence is Madison, Wis.
2. What business have you been engaged in in the past?
A. I have been continuously engaged in the gas business ever since I left school.
3. What positions have you held during that period in the gas business?
A. I started in with the Columbus Gas Co. of Columbus, Ohio, as office boy in 1883; I continued in the employ of that company continuously until 1895, filling various positions of a clerical nature, and then as engineer for the company from 1892 to the spring of 1896; in April 1896 I was elected engineer and general manager of the Madison Gas & Electric Co. and continued in that capacity until 1898, but I only nominally held the position after the fall of 1897 as I was engaged in engineering work for Emerson McMillan & Co. of New York from then until the fall of 1899, when I took the position of manager and engineer of the St. Paul Gas Light Co.; I continued in that position until the spring of 1900 and then went back with Emerson, McMillan & Co. doing gas
583 engineering work for the various plants controlled by that syndicate; in October, 1900, I was made engineer and general manager of the Denver Gas & Electric Co. and continued in that position until May, 1901, when I was elected as president of the company, which position I still occupy; in July, 1901, I was elected engineer and president of the Lincoln Gas & Electric Company of

Lincoln Nebraska and continued in that position until December 19, 1901, when the company was re-organized as the Lincoln Gas & Electric Light Co. and I am now president of that company and the engineer has not yet been chosen.

4. Are you now the consulting engineer of any plant, if so, what plants and how many?

A. I overlooked one thing in my former answer. I was elected general manager of the American Light & Traction Co. in June, 1901, and also chief engineer of that company; that company controlled the gas company at Binghamton, N. Y., the gas company at Milwaukee, Wis., the Gas & Electric Co. at Madison, Wis., the Gas and Electric Co. at St. Paul, Minn., the gas company at St. Joe, Mo., and the Gas & Electric Co. at San Antonio, Texas.

5. What different plants have you visited and examined throughout the United States in the last 15 years.

A. If I may refer to my memoranda here (witness referring to memoranda) As engineer for Emerson, McMillan & Co., I have also carried on the business of a consulting engineer and have examined the following plants in the capacity of examining engineer to pass on the advisability of purchase; I have visited and examined the gas company at Lexington, Ky., Fort Smith, Ark., Baltimore, Md., Washington, D. C., Council Bluffs, Iowa, Nashua, N. H., Springfield, Mo., La Crosse, Wis., Denver, Colo., San Antonio, Texas, Menominee, Mich., Marinette, Wis., South Bend, Ind., Montgomery, Ala., and Cheyenne, Wyoming. Those are the only plants I have had
584 personal connections with the examination of. I have examined a great many other plants for the purpose of information and to qualify myself to judge other properties.

6. Are you familiar with the process of manufacturing gas for illuminating or heating purposes?

Ans. Yes sir, I think I am familiar with all the processes in general use.

7. What are the processes in general use for the manufacture of artificial gas for illuminating and heating purposes throughout the United States?

A. Practically there are but two, carburetted water gas and coal gas.

8. Are you familiar with those processes?

Ans. Yes sir.

9. Will you describe in general terms, and in detail, so far as it occurs to you, the modern methods and apparatus for the manufacture of coal gas now in general use?

A. Well, generally coal gas is manufactured by the destructive distillation of coal which is placed in a closed retort and subjected to a high temperature; the primary apparatus in a coal gas plant is called a coal bench constructed with 5, 6, 8 or 9 retorts and each bench has an individual furnace beneath it; from the retorts the gas is taken to other apparatus which condenses out the vapor of

580*m* *Receipts.*

The following are the receipts of the works from all sources.

If to the total of the receipts from July 1st, 1899, to Jan. 1st, 1900, were added the receipts from January 1st to July 1st, 1899, which amounted to $80,163.76, it will be seen the receipts of 1900 exceeded those of 1899 by $13,522.71.

	July 1st to Dec. 31.	Jan. 1st to July 1st.	July 1st to Dec. 31st.	Total, 1900.
	1899.	1900.	1900.	
Gas rates	$15,509.25	20,177.67	20,230.40	40,408.07
Water rates, meter	26,155.86	26,284 10	31,450.99	57,736.09
Water rates, annual	19,102.06	17,178.27	19,646.46	36,824.73
Water services	24.22	99.66	24.50	124.16
Gas services	1.00	10.17	4.63	14.80
Hydrant rentals	12,267.40	.....	25,301.13	25,301.13
Pumping works	1.75	6.56	1.80	8.36
Real estate rev. and ex.	86.75	246.50	306.00	552.50
Water insurance refund	....	6.11	.....	6.11
Plumbers' liscenses	.....	.....	42.50	42.50
Meter deposits	545.00	571.00	683.00	1,254.00
Gas lamps	1,508.53	1,573.30	1,683.53	3,256.83
Gas stoves	649.54	885.21	946.63	1,831.84
Water meters	1,415.85	1,255.72	1,301.97	2,557.69
Service extensions	1,817.55	1,109.18	1,614.32	2,723 50
Water construction	196.64	90.97	309.00	399.97
Gas construction	182.89	18.10	90.08	108.18
Aggregate	$79,464.29	69,512.52	103,637.94	173,150.46

580*n* *Earnings.*

The following table shows the exact earnings of the department, and includes not only the receipts but also the differences of the unpaid balances for both water and gas. Those amounts with plus (+) in front of them are the sums that — in excess of the amount charged during the period over the sums received; and those with the minus (—) sign are the reverse:

	July 1st to Dec. 31st.	Jan. 1st to July 1st.	July 1st to Dec. 31st.	Total, 1900.
	1899.	1900.	1900.	
Gas rates paid	$15,509.25	20,177.67	20,230.40	40,408.07
Gas rates due	+ 3,547.31	— 2,677.09	+ 3,249.03	+ 571.94*
Water rates, meter, paid	26,155.86	26,284.10	31,451.99	57,736.09
Water rates, meter, due	+ 1,550.13	+ 219.41	+ 155.15	+ 374.56
Water rates, annual, paid	19,102.06	17,178.27	19,646.46	36,824.73
Water rates, annual, due	+ 3,492.28	+ 8,330.88	+ 2,702.32	+ 11,033.20
Water services	24.22	99.66	24.50	124.16
Gas services	1.00	10.17	4.63	14.80
Hydrant rentals paid	12,267.40	.....	25,301.13	25,301.13
Hydrant rentals due	+ 149.23	+ 12,660.00	— 12,470.35	+ 189.65
Pumping works	1.75	6.56	1.80	8.36
Real estate rev. exp	86.75	246.50	306.00	552.50
Water insurance refund	.....	6.11	.....	6.11
Plumbers' licenses	.....	.....	42.50	42.50
Aggregates	$81,887.24	82,542.24	90,645.56	173,187.80

*40,979
14
40,993

580o

For Comparison.

The following table is introduced for comparison only, in order that it may be seen whatever improvement or increased earning power of the works have been made or attained.

The earnings have increased much more than the cost of operation notwithstanding the large increase of the cost of coal and oil. The gas sold has increased much more than the gas made, which is owing to the replacement of the old kalomine pipe. The decrease in water pumped, notwithstanding the increased consumption, is due to the same cause.

	1899.	1900.	Increased.
Operation and maintenance, water	$24,763.09	$26,558.86	$1,795.77
Operation and maintenance, gas	21,396.81	25,412.34	4,015.53
Earnings, water	129,135.44	132,192.99	3,057.55
Earnings, gas	33,039.72	40,994.81	7,955.09
Gas made—feet	30,999,998	38,332,717	7,332,719
Gas sold—feet	25,309,963	32,974,800	7,664,837
Water pumped—gallons	1,567,677,031	1,561,455,000	Decrease. 6,222,031

580*p* *Construction.*

The following table is introduced to show what the cost of both the water and gas plants have been to the city up to the present date, which are divided under the three heads of "Original purchase," "Paid out by council," and "Paid out by board." In the subsequent table the expenses by the board are shown in detail.

The total expenditures for extension of mains amount to $53,938.77, of which $25,795.30 was for entirely new extensions and $28,143.47 was for replacements of kalomine iron pipe with larger sizes of cast iron. The total length of pipeage replaced amounts to 22,772 feet.

Water plant.

Original purchase, plant	$830,200.00	
Original purchase price, real estate	56,800.00	
Expended by council, sup. system	818,169.64	
Expended by board, prest. cont	484.95	
Expended by board, extensions, etc	51,706.11	
		$1,757,360.70

Gas plant.

Original purchase, plant	$343,000.00	
Original purchase, real estate	20,000.00	
Expended by board, extensions, etc	26,992.78	
		389,992.78
		$2,147,353.48

In construction fund Jan'y 1 ab't $40,000.

Expenditures by the Board.

Water.

Machinery and tools	$1,511.14	
Buildings and grounds	9,323.60	
Reservoirs	223.35	
Mains	37,575.80	
Hydrants	1,292.93	
Cocks and boxes	1,430.31	
Horse and wagon	348.64	
		51,706.11

580*q* Gas.

Machinery and apparatus	$6,667.48	
Buildings and grounds	1,321.34	
Mains	16,362.97	
Meters	2,555.59	
Horse and wagon	85.40	
		26,992.78
		$78,698.89

Cash Assets. Jan. 1st, 1901.

The following statement of cash assets, includes the cash on hand, cash due, and operating materials paid for. It is practically an inventory, not including materials for construction, which are already charged to that account. If from this total $85,280.47 there be taken the balance in the construction fund, which amounts to $24,351.03 and $15,540.50, which was the bonus received on the 5 per cent. bonds, and which is credited to interest, there remains $45,388.92, which is the accumulation of the department.

In water and light plant fund	$38,560.22
Cash on hand	364.83
Contingent fund	300.00
Gas rates, due to Jan. 1st	6,860.47
Water rates, meter, due to Jan. 1st	9,215.83
Water rates, annual, due to Jan. 1st	20,495.00
Hydrant rentals, due to Jan. 1st	6,448.28
Stove account, bills receivable and stock	225.84
Service extension, bills receivable and stock	717.46
Water meters	945.65
Lamps	1,146.89
Total	$85,280.47

580r

Pumping Water.

The following table is an interesting one and is worthy a careful perusal, inasmuch as it shows how much more expensive was the coal used in pumping during the first half of the year 1900. As compared to the period from July 1, 1899, to January 1, 1900, the quantity of coal consumed was about the same, yet the cost was almost 50 per cent. more. As compared to the last half of 1900, the quantity used was reduced almost 12 per cent. and the cost 28 per cent.

	July 1st to Dec. 31.	Jan. 1 to July 1.	July 1st to Dec. 31st.	Total 1900.
	1899.	1900.	1900.	
Gallons pumped	799,100,240	800,238,000	761,217,000	1,561,455,000
Gallons, daily average	4,348,376	4,396,912	4,137,574	4,267,243
Coal used, tons	1,692.35	1,659.07	1,461.-5	3,120.57
Coal used, cost	$3,005.61	$4,419.80	$3,169.62	$7,589.42
Coal, pumping, tons	1,599.55	1,531.27	1,356.75	2,888.02
Coal, pumping, cost	$2,841.73	$4,035.90	$2,967.09	$7,002.99
Coal, per million gals., pounds	4,003	3,827	3,565	3,696
Coal, per million gals., cost	$3.55	$5.04	$3.89	$4.47
Gallons water—1 lb. of coal	249	249	279	264
Head pumped against, feet	290	290	290	290
Oil, waste, etc., cost		$254.29	$188.78	$443.07
Oil, waste, etc., per million gallons		31¾ cts.	24 4/5 cts.	28¼ cts.

580s *Gas Manufacture.*

The cost of manufacturing gas is shown in the succeeding tables, the second table being only for the year 1900 and arranged by months.

It will be seen by the first table that the cost per 1,000 feet was 5 cents more during the first half of the year than during the last half.

In the last column of the second table is given the percentages of "unaccounted-for gas," gas that finds its way into the air through innumerable leaks in mains and service pipes between the holder and the individual meters. During the last five months of the year it will be seen that this has been materially reduced, which was produced by the replacements of the old kalomine pipes, completed last July. Comparing the results of this period with the corresponding months of 1899, and we have the following:

Gas delivered during the 5 months in 1900	17,625,010 feet
Unaccounted for during the 5 months in 1900	795,194 feet
Percentage of loss	4½%
Gas delivered in corresponding month, 1899	15,448,967 feet
Unaccounted for in corresponding month, 1899	1,878,846 feet
Percentage of loss	12½%
Decrease of percentage fully	7½%

Multiplying the quantity delivered during the 5 months in 1900 by this decrease in the loss percentage, and we have a saving thus effected of 17,625,010, which, multiplied by 40 cents, the cost of putting 1,000 feet in the holder, and we have a saving of $528.75. It

580t may be argued that the unaccounted-for gas, with the same leaks, would be the same whatever the amount of gas delivered. On this basis the saving would be $433.66, or $1,040.30 annually.

	July 1st to Dec. 31st.	Jan. 1st to July 1st.	July 1 to Dec. 31.	Total 1900.
	1899.	1900.	1900.	
Gas made, feet	17,477,998	17,939,402	20,393,315	38,332,717
Generator coal, cost	$1,877.16	$1,969.98	$2,187.46	$4,157.44
Boiler coal, cost	501.76	761.31	572.29	1,333.60
Oil for enrichment, cost	2,807.60	3,529.85	3,434.95	6,964.80
Misc. supplies, cost	27.70	67.12	82.95	150.07
Labor	1,270.99	1,478.92	1,554,87	5,033.79
Total	6,484.21	7,807.18	7,832.52	15,639.70
Per 1,000 feet	39 38/100c.	43 47/100c.	38 47/100c.	40 36/100c.

1900.	Feet delivered.	Generator coal.	Boiler coal.	Oil.	Misc. supplies.	Labor.	Total.	Cost 1000 feet.	Unaccounted for, per cent.
January	4,049,957	$420.48	$171.39	$838.25	$10.18	$268.92	$1,709.22	$0.42	20
February	2,980,999	333.03	172.32	605.78	11.45	275.00	1,397.58	.4688	20
March	3,095,671	326.42	170.05	610.06	5.56	275.00	1,387.09	.4481	16
April	2,762,715	298.66	83.65	527.67	10.46	220.00	1,140.44	.428	18½
May	2,651,796	310.34	95.96	500.98	12.11	220.00	1,139.39	.427	18
June	2,488,264	281.05	67.94	447.11	17.36	220.00	1,033.46	.415	13 4/5
Total	17,939,402	1,969.98	761.31	3,529.85	67.12	1,478.92	7,807.18	.4347	.....
July	2,688,305	285.08	69.52	453.22	17.69	236.13	1,061.64	.3936	20 1/5
August	2,821,144	292.95	71.73	445.51	16.44	263.34	1,089.97	.3846	8
September	3,098,314	327.08	74.75	475.81	16.38	230.00	1,124.08	.3675	7
October	3,500,682	407.93	94.66	641.60	1.29	255.40	1,400.88	.3900	3½
November	3,891,695	405.82	125.03	685.11	19.69	285.00	1,520.65	.3916	3 1/6
December	4,393,175	468.60	136.60	733.64	11.46	285.00	1,635.30	.3735	2 3/7
Total	20,393,175	2,187.46	572.29	3,434.95	82.95	1,554.87	7,832.52	.3847	.....
Aggregate, 1900	38,332,717	4,157.44	1,333.60	6,964.80	150.07	3,033.79	15,639.70	.....	.....

44. What way would good business policy, in your judgment, require this depreciation to be taken care of?

A. Well it is customary to reserve some of the earnings of the company, putting them back in the plant, to compensate for this item of depreciation. There are scarcely two men that will agree on the amount of depreciation which is constantly going on in a gas works proper.

45. From your experience and observation, what per cent. in your judgment, of the actual cost of a gas plant should be set aside annually, or otherwise, to take care of this depreciation you speak of?

A. I do not think there should be any specific fund set apart for depreciation in a growing city, for you have occasion all the time to add to your plant and it seems to me the best way to take care of this item is to devote a portion of your earnings to new construction work; I think anyone would be unsafe in devoting less than 4 per cent. of their earnings to such new construction work and I think 5 per cent. would be a very fair figure.

595 46. You mean 4 per cent. or 5 per cent. of the earnings, or cost of the plant?

A. 4 per cent. or 5 per cent. of the plant.

47. What are some of the hazards that should be taken into consideration by an investor in determining the amount, or whether he would invest in the gas business, that is, whether he should invest in the gas business or put his money elsewhere?

Objected to by defendant as immaterial, incompetent and irrelevant.

A. Well, a man don't want to put his money in any kind of a manufacturing plant without recognizing the fact that he is running some risk with his money; there are other safer channels of investment; I think the most serious hazard to a gas company is municipal and legislative attacks on all plants of quasi public corporations, and the second most important hazard is the antiquation of the property by some form of competition. There never was a time when gas companies were more seriously threatened with effective competition than they are now.

48. Name some of the forms of competition that threaten the gas business?

Objected to by defendant as immaterial, incompetent, irrelevant and not tending to prove the issues in the case.

A. The competition from electric lighting. 17 years ago electric lighting was in its infancy and it is now finding ample support from the same customers who were formerly customers of the gas companies. During the past two years, the electric business has grown much more rapidly than the gas business has and it has succeeded in taking customers away at a more rapid rate than it previously had done. Another item of competition which is threatening, but

which has not yet become extremely serious, is the use of
596 acetaline gas. A newer development, and one which is even
much more serious than acetaline gas, is the use of incandescent oil burners; these give illumination at a cost of probably one third that of gas and their introduction has proven quite serious to some illuminant companies. I made some notes on that which, if I am allowed, I will refer to—interrupted.

(Mr. MANSFIELD:)

49. Where did you make those notes?

A. I made them on the train and some after I got into town this morning.

Mr. MANSFIELD: I object to the witness referring to notes if made after the time of the introduction of this suit, his knowledge of the plant having been obtained after the introduction of this suit.

(Mr. IRWIN:)

50. The notes you refer to were made personally, were they not?

A. Yes sir, they were made by me personally and were not even suggested to me by anybody.

51. And from your own knowledge and experience of the gas business?

A. Yes, sir.

(Mr. MANSFIELD:)

52. Did you read over the evidence of the other witness who have testified in this case, or any of them?

A. No sir, I did not. (Witness referring to notes.) I made some notes on competition and I will read over the ones I have not mentioned. There is always danger of competition from a new gas company coming in. There is no such thing as real competition between two gas companies, and if competition does exist someone has to pay for it, or someone has to lose money. The proposition of isolated electric plants has been a pretty serious one; for instance,
take hotels and concerns of that sort which were the gas com-
597 panies' largest customers at one time and they are now mostly
supplied from isolated electric plants. Natural gas has entirely displaced the use of artificial gas in some localities—I don't know about this particular locality—which renders the entire investment of an artificial gas plant worthless except for junk.

(Mr. IRWIN:)

53. Are accidents and explosions some of the hazards?

A. Yes sir, that is a serious, although an infrequent hazard. By that I mean explosions, but when they do occur they generally cost a lot of money and we have to be prepared to take care of them. Accidents of one sort and another are not at all infrequent; I personally have been beyond the point of consciousness several times

by staying too long in an atmosphere heavily charged with coal or water gas. A hazard that a gas man takes when he invests in this class of property is the likelihood of electric power being developed from some neighboring hydraulic plant and where this has occurred it has often depreciated the market for gas to a point where the bonded interest on the actual cost of the plant could not be met.

54. Taking into consideration the hazards to an investor investing in the gas business, what, in your judgment, should an investor receive—what returns should he receive, on his investment in a gas business?

Objected to by defendant as immaterial, incompetent, irrelevant and not tending to prove the issues in the case.

A. He ought to receive not less than 12 per cent.

Cross interrogatories by Mr. MANSFIELD:

1. Did you conduct the negotiations for the purchase of the Lincoln Gas Company's plant?

A. No sir, I did not.

2. Did you make an examination of that plant at the time it
598 was purchased by the present company that owns it?

A. No sir, I did not.

3. When was it that you made an investigation or study of the plant of the Lincoln Gas Company?

A. Well, about in July last year.

4. What do they sell gas for in Lincoln, Nebraska?

Mr. IRWIN: The complainant objects to the question as incompetent, not cross examination and not tending to show the cost of gas in Peoria, and the witness need not answer the question unless he wants to.

The MASTER: I do not think it is strictly speaking cross examination. I think, Mr. Mansfield, that would be more properly coming from your side of the case, but I have not any power to exclude the testimony.

Mr. IRWIN: If counsel for defendant desires to make this witness his own witness and ask him that question we have no objection.

5. From your knowledge of the gas plant in Lincoln, Neb., what can it manufacture gas for and deliver it to consumers in the city of Lincoln, Neb., basing your answer upon your expert knowledge?

Objected to by complainant as not cross examination and immaterial to the issues in this case.

The MASTER: The most serious objection is that it is not cross examination.

Mr. MANSFIELD: It don't make any difference, if the witness don't answer that question, we will take it up before the court; that is all there is to it; we will adjourn this session right here at this time and place.

The MASTER: Wait a minute, Mr. Mansfield, until I can
599 make a suggestion to you. Objection is made to this question that it is not proper cross examination and that is the serious objection as I look at it. I do not mean to say it would not be perfectly competent for you when you reach your side of the case to show what gas can be made and sold for in Lincoln, Neb., or any other place you have a mind to go.

Mr. MANSFIELD: That is true, but this witness is testifying as an expert and I want to find out, from his knowledge of the various plants he has testified he has examined, what the conditions are surrounding those plants and whether he can as an expert, testify what gas is worth at those places. He has testified that he has examined the plant and has got his information as to the cost of gas from such examination and I want to know if he knows anything about it. He says he does and that is all he does say and I want to know whether he does know about it.

Mr. IRWIN: The question is not competent at all for another reason; it would not be competent even on direct examination for the reason there is nothing to show that the conditions are similar, that the cost of fuel is the same, wages the same or anything else. We have asked the witness nothing about those matters at Lincoln and they all go into the cost of gas. We are not trying a case in Lincoln but in Peoria.

The MASTER: Is it not true, Mr. Mansfield, if they had asked that question on direct examination and you had objected to it that they would first have had to show the conditions were similar in Lincoln to what they are in Peoria before they could show the cost of gas there?

6. What is the nature and character of the gas manufactured in Lincoln, Neb.?

A. Coal and water gas both.

600 Q. Are you the president of the Lincoln Gas Co. of Lincoln, Neb., at the present time?

A. Yes sir.

8. The company you are now working for, or the company of which you are a stock holder, now controls the Lincoln Gas Company's plant, does it not?

A. Yes sir.

9. What proportion of the gas manufactured in Lincoln is water gas?

Objected to by complainant as incompetent, immaterial and not cross examination.

A. About 50 per cent., I think, I am not sure.

10. Do you know the selling price of gas in Lincoln, Neb.?

Mr. IRWIN: Complainant objects to the question as incompetent, immaterial, not cross examination, and I instruct the witness he may refuse to answer.

The MASTER: Mr. Mansfield, I think you have a perfect right to go into this matter as fully as you care to when your time comes but the other side precluded you from doing it by their examination of this witness so a cross examination on that subject is not proper.

Mr. MANSFIELD: The witness has testified that he knows how much it costs to manufacture gas in a modern gas plant.

Mr. IRWIN: No, I asked him under the conditions existing here and nothing else.

11. When you testified as to the cost of gas manufactured in the city of Peoria, what did you base your knowledge on in arriving at that estimate of the cost of gas to the consumer in the city of Peoria?

A. I based it on the data Judge Irwin gave me and on my knowledge of how much material was required to produce a given
601 quantity of gas and how much labor was required.

12. Is your experience based upon a theoretical knowledge obtained by you, or a practical knowledge obtained by you, through the investigation of different gas plants and through your connection as president, manager or otherwise of gas plants in the United States?

A. It was based on my observation of other gas plants which I have examined, or have been connected with, in an engineering capacity.

13. Designate the plants you were connected with in an engineering capacity from which you derive the knowledge upon which you base your estimate of the cost in the city of Peoria to consumers, of gas as manufactured by the Peoria Gas & Electric Company?

A. I did not say I gained my knowledge of these things solely by being connected with any plant in an engineering capacity—I said on observation of other plants and also by being connected in an engineering capacity with various gas properties.

14. From your observation of what other plants and connection with what other plants?

A. (Referring to memoranda.) Columbus, Ohio; Madison, Wis. St. Paul, Minn.; Denver, Colo.; my observation of plants in Baltimore, Md., Washington, D. C., San Antonio, Texas, Cheyenne, Wyo. Montgomery, Ala., South Bend, Ind., La Crosse, Wis., Springfield Mo. and Council Bluffs, Iowa, that is all I can think of just now.

15. What observation did you make of the plant at Council Bluffs?

A. The yield per pound of coal, the make of gas per man, the yield of coke per ton of coal, quantity of tar produced per ton of coal. That is all in that particular plant.

16. What was the yield of gas per ton of coal in Council Bluffs?

602 A. Approximately 10,000 feet per ton.

17. What was the percentage of tar obtained per ton of coal at Council Bluffs?

Objected to by complainant as incompetent, immaterial and not cross examination.

A. 5 per cent.

18. What observation did you make of the plant in Springfield, Mo.?

A. I made the usual observations which an examining engineer would make; I cannot tell you the result of it without referring to my notes of the examination of the property and those notes are in my New York office.

19. You stated you were general manager of the American Light & Traction Co.—where are the offices of that company?

A. 40 Wall street, New York.

21. Do they control or are they interested in any other plants than those that have been designated by you?

A. No sir.

22. In your statement as to the size of the city of Peoria, you stated it was about 8,000 feet along the river and about 8,000 feet from the river?

A. Yes sir.

23. In making your estimate as to the cost of gas, did you consider that the city was of that size?

A. Yes sir.

24. When you estimated the cost of gas to consumers, excluding depreciation to the plant and not taking into consideration the value of the residuals or interest upon the investment, what did you consider to be the value of the mains laid in the city of Peoria?

A. I did not take their value into consideration because it
603 had nothing to do with the cost of supplying the consumer with gas if no interest was to be allowed.

25. Upon what did you base that estimate?

A. I based that estimate on the cost of materials as given me in the former question and my knowledge of the yield which would be obtained from a given amount of material and a given amount of work.

26. Then in making that estimate you made it merely from the cost of labor and materials that entered into the making of the gas irrespective of the cost of the plant, the mains, the services and meters, did you?

A. Yes, irrespective of the cost but not irrespective of the character.

27. What do you mean by the character?

A. The cost of the property has nothing to do with the operating expenses if you exclude interest, but the character of the plant alone fixes what the cost will be.

28. What do you mean by saying the character of the plant fixes what the cost will be?

A. If the plant is well constructed you can do economical work, if it is poorly constructed you cannot do economical work. This particular plant is well constructed.

28. Then you merely take into consideration the fact that this plant is so constructed as to do economical work and you only take into consideration the labor and materials that go to make up the manufacture of that gas in arriving at your estimate?

A. I took the character of the plant, the cost of materials and the cost of labor to determine the cost of manufacture, distribution and sale of the gas; you have got something besides the cost of manufacture to figure there; you must distribute your gas sell it and collect for it.

604 29. What did you estimate then the cost for the distribution of gas in the city of Peoria to be—the cost of labor for the distribution?

A. I estimated the cost of the clerical labor and all labor connected with the distribution and sale of the gas including taxes and office rent at 56 cents per thousand cubic feet on an output of fifty millions per year.

30. What did you estimate the office expenses of the Peoria Gas & Electric Co. to be?

A. I have not separated my office expenses from those expenses which are indirectly related to the office expenses; I have run sales, collection, reading meters and everything into the same account.

31. How many men did you consider were necessary for the Peoria Gas & Electric Co. to employ for the purpose of distributing this gas in the city of Peoria in making up your estimate on the basis of an output of 50,000,000 cubic feet per year.

A. You will have to give me time to figure that because I have not got that with me; I have the cost only. (Witness figuring) I cannot give you that because I have not figured it out that way; I allow, for instance, 200 meters at a cost of reading $3. per day or at a cost of reading meters at 1½ cents per meter; I have not figured it out on the basis of the number of men at any time.

32. How many men would it require to read 200 meters?

A. It would require one man one day.

33. What other labor is attached to the distribution of gas in the city of Peoria?

A. Well, you must read your meter, deliver your bills, collect your money either by having people call at the office and give it to the clerk or by sending out a collector for it; you must have some one to devote all or part of their time to the keeping
605 of the records of services and meters; you must have some one devote all their time or part of their time to complaints, which in Peoria I think would take one man at least all of his time; you must have clerks to keep your office records—and I assume they have not less than three thousand open accounts on their books here; the bills must be made out, a certain amount of soliciting must be done to maintain their business; you must have a superintendent of distribution; you must have a manager; it is customary to do some advertising; you generally have not only your manager's salary to pay, but as a rule, the directors receive an allow-

ance; you must have men to repair meters, to set and remove meters; you have certain legal expenses and certain bad debts. Those items I estimate on an output of fifty million cubic feet a year would amount to not less than 56 cents per thousand cubic feet of gas sold—no, I have made a mistake in that estimate and will have to correct it. I estimate the cost of distributing and selling gas at 34 cents per thousand cubic feet; in my former estimate I estimated the cost, exclusive of residuals, at 90 29/100 cents and allowing for residuals, which I estimate would be worth 22 cents it brings the cost of gas to 68 29/100 cents, 34 cents of which is for expense of distribution and sale and 34 cents is for expense of manufacture. When Mr. Mansfield asked me about the amount of expense for distribution and sale I deducted from the 90 29/100c. my entire cost of manufacture, which I estimated at 34 cents, and this left 56 29/100 cents; this I recognized to be too large an item for distribution and sale and I found I had arrived at it by deducting the cost of manufacture from the total amount and had neglected to give credit for my estimate of the value of residuals.

34. What did gas sell for per thousand cubic feet in Columbus, Ohio, at the time you were connected with those works?

606 Mr. IRWIN: The complainant objects to the question as incompetent, immaterial, not cross examination, and because no foundation was laid for it on direct examination.

Mr. MANSFIELD: This is a matter that anybody connected with a gas works must know and I think I have a right to ask the witness this question or any other question that concerns his connection with the gas plant in order to find out whether he knows it or not. Suppose a witness comes here and says; Yes I was connected with that gas plant for 20 years and answers a lot of questions on direct examination, passing himself off as an expert, and then if on cross examination I am not allowed to go into that matter, how can I determine whether he is an expert or not?

The MASTER: As I have said before, Mr. Mansfield, I think you have a perfect right on cross examination to ascertain the qualifications of this witness as an expert and to show to what extent he has been connected with and in what manner the different plants he has testified about as tending to prove his expert knowledge upon these matters; but as to what the price of gas may be in St. Louis or any other city it does not seem to the master to be a pertinent inquiry on cross examination; I do not mean to be understood as saying but what when you come to your side of the case you would have a perfect right to show all these facts by showing other matters in connection with them, but on cross examination of this witness your question does not seem to the master to be proper cross examination.

Mr. MANSFIELD: This witness will have to go to Chicago then and go before the court before I finish my cross examination.

Mr. IRWIN: That is all right; when you get ready we will go with you.

water, removing the tar and removing the sulphur; it is then measured and stored; that in general describes it.

10. Have you examined the plant of the Peoria Gas & Electric Co. in the city of Peoria?

A. I have examined it in a sense; I went over the plant this morning and saw the class of apparatus used and made a thorough visual examination.

11. Look at Exhibit "1" now shown you, which purports to be the general plan of the plant of the Peoria Gas & Electric Co., and I will ask you to state if in your judgment it is a fair repre-
585 sentation of the plant of the Peoria Gas & Electric Co. in the city of Peoria, Ill., as seen and examined by you.

A. I should say that is the exact plant; it is apparently the exact plant.

12. State what is your judgment, from your examination of the plant and reference to Exhibit "1," as to the character of the *paint* of the Peoria Gas & Electric Co. in the city of Peoria.

A. Well, it is a straight coal gas plant of modern construction and is in good condition.

13. I will ask you what is your judgment of the plant as to its efficiency and capability for the manufacture of coal gas economically?

A. Well, coal gas can be manufactured as cheaply in that plant as in any coal gas plant of its size with which I am familiar.

14. Are you acquainted with the location, size and topography of the city of Peoria?

A. In a general way, only.

15. Just describe the city of Peoria with reference to the location of the plant of the Peoria Gas & Electric Co. as it now occurs to you.

A. As I remember the town, it stretches along the river for a distance, I should say, of 8 or 9 thousand feet and extends back I don't know whether it is directly north or a little west of north for a similar distance.

16. Westerly, I suppose, would cover it?

A. Well, I could not tell but the country rises from the river over to the residence portion.

17. About how far?

A. I should say about 8000 feet.

586 18. Do you know how many inhabitants about there are in the city of Peoria?

A. I was familiar with the United States census of Peoria and since I came here I have been given to understand that the city has a population of 60,000—more than 60,000 people.

19. I will ask you what in your judgment is the size and character of the plant of the Peoria Gas & Electric Co. as adapted to the city of Peoria, its location and size?

A. The plant is well located, both for the distribution of gas and its economical manufacture; the size of the plant, I would say, was insufficient now to supply the entire city of Peoria, if that is what

you mean; the character of the plant, I think, is a proper selection for this locality, that is, the selection of the apparatus used, the location and everything of that sort has been judiciously made.

20. Assuming that the city of Peoria is located and of the size as described by you in your previous answers; and assuming that gas coal could be delivered at the plant at the rate of $2.80 per ton, that stokers could be employed at $65.00 per month, head stoker at $70. per month, that common labor could be employed at $1.50 per day, that there was a local market for coke at the rate of $3.25 per ton, that the tar bi-product could be sold at 5 cents per gallon, that the ammonia bi-product could be sold at 8 cents per pound, that cannel coal for enriching could be bought for $3.00 per ton, that gas oil for making water gas could be bought at 3¾ cents per gallon, that coke for the making of water gas could be bought at $4.00 per ton and that the company was not bound by any requirement as to candle power of gas to be furnished consumers; which in your judgment would be the best and proper business venture, to construct a coal gas plant or a water gas plant, assuming that the
587 conditions as named existed in the spring of 1900 and prior thereto, and that the plant of the Peoria Gas & Electric Co. was constructed during the year preceding September 1, 1900?

Objected to by defendant as immaterial, incompetent and irrelevant.

A. You want to know which would be the best selection, coal or water gas?

21. Yes.

A. You have not given me one important item—how much gas do you send out?

22. Of a plant with a capacity of 500,000 cubic feet per day.

A. Without hesitation with an output of 500,000 cubic feet I should say coal gas.

23. Why would you advise the construction of a coal gas plant at that time and under the conditions named?

A. First with a make of 500,000 cubic feet a day coal gas could be manufactured cheaper; second, coal gas as a rule is more desirable; third, no time contract can ever be made for gas oil and you are virtually at the mercy of the Standard Oil Co. if you decide on a water gas plant; it is not likely oil will go lower than the price you have given me and it is entirely probable that it may double.

24. From your knowledge of the city of Peoria and the plant of the Peoria Gas & Electric Co., and assuming that said plant was constructed during the year preceding September 1, 1900, at a total cost for said plant, including the real estate, main system, services, meters and all other equipments connected therewith, of $434,000; and assuming further that upon the first day of September, 1900, said gas plant was in operation and had been for a period of four months and was then manufacturing and delivering to con-
588 sumers at the rate of fifty million cubic feet of gas per annum; and assuming further that the wages of stokers and

common labor were as before stated; what in your judgment would be the actual cost per thousand feet of gas manufactured by the Peoria Gas & Electric Company as delivered to consumers at the place of consumption on that date?

A. Well, now, leakage is to be assumed; you gave me some figures a few moments ago which I wrote down; I had already made a computation of the cost of gas on those same figures with the exception I figured stokers at $60.00 per month instead of $65. per month. Without stopping to go over that computation and correct that small error, which is not large, I would compute the cost of gas—did you say without residuals?

25. Excluding in your estimate of the cost any interest on the investment or depreciation on the plant, and excluding any account to be taken for residuals, leaving out any account of those three items.

A. (Witness referring to notes) Computed on the basis of $60. per month for stokers instead of $65. I figure it at 90 29/100 cents per thousand cubic feet on a make of 50,000,000 per year.

26. From your knowledge and information of the plant of the Peoria Gas & Electric Co., and assuming that the real estate upon which the same is situate was worth at its fair market value the sum of $50,000; and assuming that on September 1, 1900, the said plant had a main system laid through the principal streets of the city of Peoria of a length of about 26½ miles, consisting of 16, 12, 10, 8, 6, 4, and 2 inch mains, and that it had also connected with its mains on that date 2426 services and had 1758 meters set complete in the premises of consumers, and taking into consideration in your estimate the character and equipment of said plant as you
589 found the same on your examination; what in your judgment would be the fair market value of said plant complete on or about the first of September, 1900?

Objected to by defendant as immaterial, incompetent, and because no proper qualification of the witness is shown.

A. I will not make any attempt to value the plant in detail, but roughly, a gas plant with the proper mains, services, meters, etc., will cost to build about $1. per cubic foot capacity per day; the plant of complainant is well constructed, substantially constructed, and I think that estimate would, in a general way, represent its value, but it would take more time to compute the value than I can spend on it.

27. Your estimate would be substantially $500,000.?

A. Yes sir.

28. What elements enter into the depreciation of a gas plant and how do they act or effect the plant?

A. The greatest factor in depreciation of a gas plant is probably antiquation of apparatus, that is, much of the apparatus used in a gas works is apt to be rendered useless before its natural rate of

depreciation, or life, is ended. The natural wear and tear—interrupted.

(The MASTER:)

29. What do you mean by antiquation?

A. By antiquation I mean you may buy a piece of apparatus now which might reasonably be expected to have a life of 20 years but it may become too small for use, or owing to a change in the process, it may no longer be advisable to use that piece of apparatus and it has to be junked; that is probably the most serious feature in the estimate of a gas plant to outgrow everything, and to put your apparatus in large enough in advance would be practically impossible because interest on the additional investment would
590 more than eat up the cost of throwing that apparatus away in five or ten years; compounding money only takes about 10 years to equal itself. Now there is practically no portion of your gas works which may not become antiquated through a change in process or the growth of your business; that is essentially so of your condensing, scrubbing and purifying apparatus, also your exhausters, station meter and mains. I venture to say there is not a station meter which was bought ten years ago that is large enough to do its work and it has been either entirely discarded or supplemented and it is generally cheaper to discard them. That is one factor of depreciation. Another ordinary factor of depreciation is the natural wear and tear which is large on certain classes of apparatus used around a gas works; there is a constant atmosphere of sulphurous acid S. O. 3 which will attack iron work; you have ammonia around the gas plant which will always attack metal work, particularly brass, and then a great deal of your apparatus is exposed to the weather—it must necessarily be exposed to the weather; then you have the depreciation which comes from hazard; you hope everything will run smooth, but you may have accidents or explosions; explosions in gas works are not common, but they are not unusual, and a conservative gas man would feel like allowing for them; then there is the further depreciation which may result from competition; owing to competition you may have had at one time more business than you have afterwards; then the additional portion of your plant which you put in has practically been rendered useless because you have no work for it to do and it is of no more value to you than so much junk.

(Mr. IRWIN:)

30. Is there any depreciation to the mains, services and meters?

A. Yes sir, there is a considerable depreciation in services;
591 service pipe in some soils may not last to exceed three years; the average ordinary life of a service pipe I should say would be 10 years.

31. Is there any depreciation to the benches and retorts by reason of use?

A. Well, the setting of retorts will last from two to three years; a furnace will last from 6 to 10 years; an arch will last from 10 to 15 years.

32. Is there any depreciation to the holder?

A. The depreciation to the holder is generally due to natural causes and the rapidity of it will depend on the attention it receives; I know of very few holders that are of any great age, yet on the other hand there are some that are in good condition that have been up for 10 or 15 years. I estimate the life of a holder at from 15 to 20 years.

33. Is there any depreciation to the boilers and engines?

A. Yes sir, the depreciation to engines in a gas works is very rapid; ordinarily engines are only used 10 hours per day but a gas works engine is used generally 24 hours per day; an engine might last a long time but I doubt if it pays to use any of the engines longer than 8 to 10 years; boilers depreciate rapidly if they are pushed hard; as a rule the insurance companies don't care to insure on them after they have been in use 10 or 12 years—you generally find it advantageous to renew them.

34. Is there any depreciation to the iron or steel smoke stack?

A. Yes sir, the depreciation to the iron or steel smoke stack would in some cases be rapid; it depends a good deal on what kind of coal is used; I should say the fair average life of a stack would be 10 years, and probably not that high.

35. You have seen the holder of the Peoria Gas & Electric——

592 A. Yes sir.

36. Will you describe its construction so far as you now remember?

A. I will change the name of that to gasometer to distinguish its two parts; the tank is a steel tank which contains water to within a short distance of the top, the holder is, I think, a two lift holder and this portion contains the gas; the tank is constructed of mild sheet steel which would vary in thickness from about one inch plates on the bottom sheet to ¼ inch plates at the top; the holder is also constructed of mild steel and is like an inverted cup; the thickness of the holder plate is probably about 2/16 of an inch and the weight of the entire holder is probably equal to about 3 ounces per square inch; it therefore exerts a pressure on the gas at all times of about 3 ounces per square inch and you pump the gas in against this pressure and it delivers it to the city, or to the governor, which further controls the pressure, at this pressure the quantity of gas contained in the holder will affect the height.

37. Is there any depreciation in your judgment resulting to meters of a gas company in constant use?

A. Yes sir, there is a depreciation and there is also an item of repairs; meters are generally repaired every three years and their life would be from 12 to 25 years.

38. Will you distinguish and illustrate, so far as you can, what

you term as depreciation as distinguished from repairs in the management of a gas business?

A. There is no exact line of distinction between repairs and depreciation, although there are some repairs which are distinctively repairs and there are other items of depreciation which are distinctively depreciation and no one would confuse them; every
593 three years we have to overhaul meters, and fixing the meters up, repacking their glands, putting in new diaphragms and reseating the valves I would consider repairs, but the time comes when a meter no longer will stand repairs and you have to throw it away because it becomes so generally out of repair that the repairs would cost as much, or nearly as much, as a new meter and you would not have a meter as good as a new meter after you repaired it; that I would call depreciation.

39. How is that with respect to other parts of a gas plant?

A. If a main gets to leaking a little, we repair it and charge it to repairs, but there comes a time when the main will be too small or becomes so leaky that it does not pay to repair it, and as a rule we then abandon it, lay another main down the street and tap the services on to the new main, disconnecting them from the old main, then cut the old main off and probably leave it in the ground unless it is very easily removed, because it has no value except for junk.

40. As I understand you, when you simply have a crack, leak or break in a pipe, you call that repairs?

A. Yes, but when we make something new we call that a depreciation charge.

41. How is that with reference to engines, pumps, benches, retorts, etc.?

A. That same thing is true straight through although I am inclined to think that most of the pumps, engines, benches and hydraulic main have been thrown away, not because they were worn out, but because they have become inadequate, they were either too small or were not adapted to the work required of them. For instance, all of our old hydraulic mains were not adapted to the high heat we now carry and we find it more economical to discard the main and buy a new one than to maintain low heat such as prevailed
594 15 years ago.

42. If a gas plant is at all times kept in good, general repair by reason of the repairs mentioned, would the plant necessarily depreciate so that in time it would become substantially worthless for the work required of it.

A. Ordinarily yes, in some special cases no. I can see how you would tear down one part of a plant and renew it and your plant never would become obsolete because it has been rebuilt by sections from time to time.

43. Should this element of depreciation mentioned by you in your judgment be taken into consideration in determining the cost of gas as manufactured and sold to consumers by a gas company?

A. It has to be taken into consideration in some way.

616 A. I did not use the cost of the plant at all because the question given me was the cost exclusive of interest and there being no interest to be included there was no reason for knowing the investment.

76. Then in your estimate you did not assume that the Peoria Gas & Electric Company's plant was worth $434,000. as asked you by counsel for complainant?

A. I would not consider that figure out of the way.

77. Just answer the question yes or no.

A. I cannot answer it yes or no, because you put it in such a way that if I answer it one way I contradict myself.

78. I will repeat the question (interrogatory 76 repeated).

Objected to by complainant as immaterial, incompetent, and involving an assumption to the witness of the cost of the plant which was not made a part of the direct interrogatory relating to the cost of the gas.

The MASTER: The master is of the opinion the question has already been answered but the witness may answer it again subject to the objection.

A. Counsel for complainant asked me if I estimated the worth of the plant and I replied no, except in a general way; I said I applied the rule that a gas plant would cost $1.00 per cubic foot capacity per day and on that estimate it would make the value of the plant together with meters, services and mains $500,000.

79. In estimating the cost of the plant, would you estimate an increase of $1.00 for every 1000 cubic feet of gas manufactured?

A. Roughly I would estimate $1.00 for each cubic foot of daily capacity, that is, not 1,000 cubic feet.

80. For each cubic foot?

A. For each cubic foot of daily capacity.

617 81. You are not acquainted with the general conditions as to the cost of labor and materials in the city of Peoria, are you?

A. Except as given me by counsel on direct examination, and on which I based my figures and the assumptions were sufficient for the estimate I made.

82. In the manufacture of fifty millions cubic feet per year, what would be the cost of the common labor that enters into the manufacture of that amount of gas per year?

A. When you say common labor—Interrupted.

83. I mean labor that is paid for at the rate of $1.50 per day?

A. About 4 men of that class would have to be continuously employed around a gas plant, the balance would be higher priced labor.

84. What would be the occupation of those four men?

A. Handling coke, handling purifying material and firing boilers.

85. How many stokers would be required for the manufacture of that amount of gas?

A. Five as these works are laid out, that is 4 stokers, one head stoker and the furnace man; it depends upon how you class them.

86. What are the duties of the furnace man?

A. I will have to change my last answer and say 6 stokers; a furnace man quenches the coke, removes it from the retort house and operates the furnace except the firing of them and including the clinkering of them.

87. What are the duties of the stokers?

A. The stokers charge and draw the retorts; charge the furnaces, keep the standpipes clean and keep the hydraulic main free of tar.

618 88. Do they supervise and regulate the quantity of heat?

A. The furnace man is supposed to keep the heat up on the furnaces; he generally has direct charge of that work.

89. Does it require an expert knowledge to do that?

A. An expert in a sense; a man can be taught to do it who can read or write; it really requires training, not expert knowledge.

90. What did you estimate the wages of the furnace man at?

A. I rated all the furnace men as stokers as it is customary to pay furnace men the same salary as stokers.

91. How many furnace men did you estimate would be necessary to manufacture that amount of gas?

A. I estimated for retort house labor there would be required 4 stokers and two furnace men, or 6 stokers including a head stoker.

92. How many retorts would it be necessary to keep heated for the purpose of manufacturing fifty million cubic feet of gas per year by a plant similar to the Peoria Gas & Electric Company's plant as shown by Exhibit "1"?

A. The biggest part of the year it would require that three benches be kept under fire and possibly they would have to be kept under fire for the entire year—probably only two for the biggest part of the year, but for all of the winter months it would require three to be kept under fire.

93. Then, if you had 6 stokers and one head stoker you would have them all employed in and about those two benches during the process of the manufacturing of the gas?

A. Yes sir.

94. Then sometimes you would have two stokers employed in the superintendence and operation of one bench of retorts, would you?

A. No sir, I don't think at any time the gas could be sup-

619 plied from one bench.

95. You testified there would be 6 stokers and one head stoker, didn't you?

A. Six stokers and one head stoker amounts to 2 stokers and one furnace man on each shift.

96. In your assumption that there are 200 meters in the city of Peoria, what length of time would it take for a clerk to prepare bills for the various customers in the city of Peoria?

A. I did not assume there were 200 meters, I assumed there were

about 1700 meters, and in my estimate of cost of reading I assumed a cost of 1½ cents per meter; a clerk can take care of about 1800 accounts per month, entering them on a register and make out the customers' bills.

97. Would it take any longer to distribute the bills than it would to read the meters?

A. It does not take as long to distribute the bills.

98. How many men do you consider would be necessary to compose the office force of the Peoria Gas & Electric Co. and do the business of that company upon the basis of the manufacture of fifty million cubic feet of gas per year?

A. Do you want me to include the manager, the financial officer, the solicitors and complain- men?

99. I want you to state how much the office force would be.

A. Does a manager belong to the office or to something else, and does a solicitor belong to the office force. If I knew what you want I could give it to you.

100. You know with what department those people are classed generally in a gas business, don't you?

A. Yes, but the classification is not uniform.

101. Well, answer it then according to your best knowledge.

620 A. Including the manager, complaint men, solicitors, secretary and meter readers, about 12 people in all would be an average working force.

102. How many men would you consider it was necessary for the Peoria Gas & Electric Co. to have to answer complaints, or to attend to complaints, taking into consideration the fact that the plant was finished in September 1900?

A. For that period, I think the larger part of two men's time would be employed in complaints and gratuitous work.

103. What do you mean by gratuitous work?

A. Work which may not necessarily be complaint work, but work in the interest of giving customers better service, such as voluntarily cleaning out burners, putting on new tips, and doing odd jobs of piping or repairs to piping that a gas company is not legally responsible for.

104. Is it customary for gas companies to do work they are not legally responsible for unless they get a return from it?

A. Yes sir, it has been within the last few years; we have all turned merchants lately.

105. You have testified that taking into consideration the hazards of the business you thought investors should receive, as a return upon the money invested, not less than 12 per cent.—state what you mean by that?

A. Well, I don't know how to state what I mean other than to say I would not want to put my money into any kind of a quasi public corporation unless I thought I could make 12 per cent. on it as long as I could get 5 or 6 per cent. on mortgages where I took no risk.

106. Upon what do you estimate that 12 per cent.?

A. On the actual money invested in the business.

621 107. In calculating 12 per cent. upon the actual money invested in the business do you take into consideration the amount of money expended from year to year for betterments to the plant?

A. Partially only.

108. To what extent?

A. Any betterments in excess of 5 per cent., feeling it is necessary to put 5 per cent. back into the property to counteract the depreciation which is constantly going on.

109. What do you mean by your statement that the greatest hazard a quasi public corporation sustains is through municipal legislation?

A. Restrictions are often placed on the operation of quasi public corporations which if sustained by the court would be practically a confiscation of their property.

110. What per cent. of the 12 per cent. which you allow to investors on account of the hazards of the business, would be represented by the hazard sustained through municipal legislation?

A. I could not place a definite amount on that one hazard alone and besides I referred in direct examination to both State and municipal legislation; I would assume that the hazards which any investor must expect when putting his money into a quasi public corporation are such that he should have at least a double return on his money than he could get from loaning it on real estate.

(The MASTER:)

111. Do you include in that the 5 per cent. for depreciation or exclude it?

A. I exclude it. I would like to add to my answer and say that I do not necessarily mean the property must earn that 12 per cent. but unless a man has a reasonable assurance he will get a 12 per cent. return on his investment he is not warranted in taking the risk of investing in this class of business.

(Mr. MANSFIELD:)

622 112. In making your estimate as to the cost of gas, exclusive of the value of residuals, depreciation in the plant and interest on the investment, at 90 29/100 cents per thousand cubic feet, would the value of the residuals amount to 10 per cent. of the cost of the plant of the Peoria Gas & Electric Company?

A. No, they would not amount to that much.

113. What would be the cost of the gas to consumers taking into consideration 10 per cent. upon the investment, also 6 per cent. for depreciation, deducting therefrom the value of the residuals, taking into consideration that the amount of gas manufactured by the Peoria Gas & Electric Co. is fifty million cubic feet per year and assuming that the cost of the plant was approximately $434,000.

Objected to by complainant as incompetent, immaterial, and simply calling for a mathematical calculation which the witness is not required to figure out, not calling for any expert knowledge.

A. About $2.07 per thousand cubic feet.

114. Were an electric light plant a part of the business of a corporation or individual who owned a gas plant, would you then take into consideration the competition resulting from electric lighting in considering the hazard connected with the gas business?

A. Yes sir, I would, whatever renders your gas investment useless to you makes it of no value and you cannot take care of those customers in your gas department that go out and buy new machinery of an entirely different type from that contained in your gas plant.

115. Would it be necessary under those circumstances to employ the same number of men for the purpose of soliciting and would it require the expenditure of as much money for the purpose of doing the business as it would were there not an electric plant connected with the gas plant?

A. I should think it would require as much as the gas
623 companies now are continually losing gas consumption and they are trying to make it up in a different field—in the field of fuel gas.

116. Then the fact that there was an electric plant owned and controlled by the same corporation or individual as the gas plant was, would make no difference in the cost of the manufacture of gas in your opinion?

A. It would make a difference in the cost at the consumers' burners, but it would not in the two items you mention, viz: advertising and soliciting. Undoubtedly the same company can operate a gas and electric light plant more economically than they can be operated by two separate companies, but the saving will not come in where you look for it; the saving would come in in the management, combined office rent and a lesser amount of bad bills; in some cases by a consolidation of attendants such as complaint work, necessary telephoning, and you can read meters more cheaply the more frequently they occur and if the same man read both the gas and electric meters something could be saved there.

Re-direct interrogatories by Mr. IRWIN:

1. You mentioned something about candle power in your cross-examination. I will ask if the candle power of coal gas deviates or changes in any manner from the time it is manufactured in the plant, between that and the consumers' burner?

A. Well, theoretically it depreciates some; practically it does not depreciate to amount to anything except in extreme cases where nap-thaline is thrown down or something of that sort.

2. Does not the temperature have considerable to do with the candle power of coal gas?

A. It does not have considerable to do with it but it has some to do with it.

624 3. Well, a coal gas manufactured of a uniform 18 candle power, for instance, at the works, and delivered at the extreme distance in a city, does the candle power not decrease in the transmission of the gas to consumers?

A. It does not decrease enough so the average—you could measure the difference with the most delicate instrument in any distance you have got here.

4. The depreciation, as I understand you, does not affect the candle power of the gas for general use?

A. Practically it does not affect it.

5. Is it practicable to determine the candle power at the place of consumption?

A. Well, it is seldom or never done, but it could be done; we think we are pretty lucky when we get within a per cent. of it, at least I do; practically you may say there is no depreciation in transmission.

Interrogatories by Mr. ABBOTT:

6. In the course of your direct examination, you estimated the size of the city of Peoria from your observation of it to be about from 8,000 to 10,000 feet long along the river and extending for a similar distance back from the river; then on certain assumptions being given you as to the cost of labor and materials entering into the manufacture of gas, you made an estimate of its cost. On your cross examination you were asked if your estimate was based on the size of the city as assumed by you. Suppose now the facts to be that the city extends up and down the river for a distance of 4½ to 5 miles, but that the remaining assumptions as to the population, cost of labor and material remain the same, would that make any difference in your opinion in the cost of the manufacture of gas?

A. Well, it would make very little difference in the cost of
625 manufacture if you exclude interest, but it would make a difference in the investment.

7. I was going to come to that. If the area were increased to that extent, would not that result in a corresponding increase in the amount of investment through the increased length of mains, etc.?

A. I would not say exactly corresponding but it would cause an increased investment.

8. Assuming the population to be as stated, and that the city extended up and down the river say about 4½ to 5 miles, it would necessitate a greater length of mains and a greater length of time would be required, of course, to do the necessary traveling for the reading of meters; would the effect of that be to increase or diminish the cost of distribution?

A. The effect would be to slightly increase it but that increase would be slight.

9. In your judgment as a practical gas man are the solicitors, meter readers, complaint men and men whose business it is to interest themselves generally in giving better service to consumers, a necessary part of the clerical force of a modern, well equipped office of a gas plant, whose wage or salary should be included in determining the cost of gas to consumers?

A. Yes sir, I think so.

Adjourned by agreement until Monday, January 6, 1902, at 1:30 p. m.

626 United States court room, Government building.

PEORIA, ILL., MONDAY, *January* 6, 1902—1:30 p. m.

Parties met pursuant to adjournment.

Present same as before.

DONALD MCDONALD, called on behalf of complainant, being first duly sworn, deposes and says:

Direct interrogatories by Mr. W. T. ABBOTT:

1. Please state your name, age and residence?

A. Donald McDonald; 43; Louisville, Ky.

2. In what business are you engaged?

A. Gas business.

3. With what company are you connected in Louisville?

A. The Kentucky Heating Co.

4. Does that company operate a gas plant?

A. Yes sir.

5. How long and in what different capacities have you been engaged in the gas business?

A. I have been in it 12 years; I was first superintendent, then chief engineer, then president of the company I am now connected with.

6. Are you familiar with the business of the manufacture and sale of gas?

A. Yes sir.

7. Are you familiar with the different processes entering into the manufacture and sale of gas?

A. Yes sir.

8. In connection with that business, or in any capacity, have you had to do in a general way with the construction of brick and iron and wooden buildings?

A. Yes sir, I have had a great deal to do with the construction of buildings and gas plants; all of the works of the company
627 with which I am connected I planned and built; I never assisted in the building of any other plant except that one

but have watched the construction of other plants and kept myself familiar with them.

9. Are you familiar in a general way with gas plants other than the one with which you have been particularly connected, and if so, what plants?

A. I have made it my business to go through and look at the plants in the various cities where I have been on other business; I have examined the plant at Cincinnati, the one at Boston, at Terre Haute, Ind., at Columbus, Ohio, at Chicago, Ill., and some others I don't think of just now.

10. Have you examined the plant of the Peoria Gas & Electric Co. in the city of Peoria?

A. I examined it this morning.

11. Describe that plant in a general way as it appeared to you in the course of your examination?

A. It consists of a stack of retorts in a large two story fire proof building, fire proof roof and fire proof flues; near that is a building containing the exhauster, the tar extractor, condensers, scrubbers and purifyers; outside is a 300,000 foot holder in a steel tank; then there are very large and well built sheds for coal and platform for the handling of coke.

12. Look at the plat now shown you marked Exhibit "1" in this case and state whether it is a fair representation of the plant of the Peoria Gas & Electric Co. which you have just described?

A. So far as a plant can be shown by a plan alone, this is a correct plan of those works; I mean by that it requires a plan elevation and sections to completely show a works.

13. Are you acquainted in a general way with the situation, location, size and improvements in the city of Peoria?

A. I made it my business this morning to ride over the
628 city on the street cars, as well as walk through a great many of the streets so as to get a general idea of the city; I am not familiar with the names of the streets, but with the character of the streets, the character of the houses with which they are built up and the general lay of the land I am familiar?

15. Are you familiar with the general cost of buildings, materials, machinery and apparatus going to make up a gas plant during the year preceding September 1, 1900?

Objected to by defendant as immaterial, incompetent, irrelevant, and not tending to prove the issues in the case unless confined to the cost of materials and labor in the city of Peoria?

A. I am familiar with the cost of nearly all of the elements going into the erection of a gas plant; when I say nearly all, I mean that the plant with which we operate is a water gas plant and after you pass the retorts, a water gas plant and a coal gas plant differs very little; I have never built retorts nor have I ever had active supervision in operating them.

16. In the question which I asked you a few minutes ago in

The MASTER: The master desires to be fair with you, Mr. Mansfield, and I will not exclude your question or rule upon its
607 competency; I am only stating to you how the master feels about it and I now say to the witness that he may answer subject to the objection.

Mr. MANSFIELD: I withdraw the question for the present.

35. You have stated you made an examination of the plant in Lincoln, Neb.—when did you make that examination?

A. I beg your pardon, I don't think I stated that except indirectly.

36. Upon what information or investigation did you refuse to have anything to do with the Lincoln gas plant until certain changes were made in that plant?

Mr. IRWIN: Complainant objects to the question as incompetent, immaterial, not cross examination and I state to the witness he may refuse to answer any question here that pertains to the private business affairs of any company with which he has had any connection or concerning which he has testified except the Peoria plant.

The MASTER: I think, Mr. Mansfield, you have a perfect right to ascertain how thoroughly the witness has gone into this matter to qualify him as an expert, not by ascertaining what the price of the gas is or what it is sold at necessarily, but you can ascertain to what extent he has made examination of the cost of manufacturing gas at different localities, the cost of gas plants, their operation, etc., and thus test his knowledge as an expert. I don't think it proves whether a man is an expert or not to ask him what the price of gas is in a certain city. In other words, I think your cross examination ought to be confined to matters brought out in chief.

Mr. MANSFIELD: I did draw out the fact he had examined that plant in Lincoln, Neb., and had been connected with it.

The MASTER: I think you have a right to find out how thor-
608 oughly he examined it and all other plants he mentioned, as that goes to the direct question of his expert knowledge.

Mr. MANSFIELD: That is what I am trying to find out and that is what my question is asked for but will withdraw it for the present.

37. What kind of an investigation did you make of the Lincoln gas plant when you were out there last July?

A. I made a visual examination of the apparatus and of the records.

38. What do you mean by the apparatus?

A. The coal gas benches or water gas generator, the exhauster and purifying boxes, center seal and the holder.

39. By visual examination do you mean you made the same kind of an examination of the Lincoln gas plant that you made of the Peoria Gas & Electric Co.'s plant?

A. I made the same kind of an examination, differing only in degree.

40. When did you arrive in the city of Peoria today?
A. About 6:55 this morning.
41. Whom did you see in the city of Peoria when you first came
ere?
A. Well I saw the usual people a man would, the bus men and
e hotel men.
42. After that, who did you see connected with this case?
A. The first man I saw that was connected with the Peoria Gas
Electric Co. was a young man in their office whose name I did
t learn; I got directions from him as to the location of the gas
orks of the company and visited the gas works arriving there
out 7:45 this morning.
43. Who did you go down there with, if any one?
A. I went down alone and Mr. Little came down, I should say,
about half past 8.
9 44. How long were you down there at that plant?
A. I am not sure but am inclined to think I was there
om 7:45 until 9:45 a. m.
45. State what you did while down there?
A. When I arrived there, I got a plan of the gas works and studied
fixing in my mind in a general way the size of the different
uildings and apparatus, the size of the holder, the size and location
the exhausters, condensers, and in fact all of the apparatus neces-
ry for the manufacture of gas.
46. How long did it take you to examine that plant?
A. I spent about ¾ of an hour on an examination of the plant and
studying the location, the reasons for so locating it, and the
easons for so planning the works as I found them laid out on that
lan.
47. Where did you go after leaving there?
A. I went from there to the office of the Peoria Gas & Electric
o. to examine their maps of mains and plats and other records per-
aining to the system of the company.
48. How long did you stay there?
A. I don't know how long I did stay there; I did enough work
have stayed there for an hour and a half I should say.
49. Where did you go then?
A. From there I went to the office of Judge Irwin.
50. What time did you get there?
A. I don't know but it was before 12 o'clock; I should say it was
etween 11:30 and 12 o'clock.
51. What time did you go up to the Peoria Gas & Electric Com-
any's place of business the last time this morning?
A. I should say I got there about 10 o'clock or between 9:45 and
0 o'clock.
52. You have within your knowledge, then, the same
10 foundations to give evidence as to the apparatus contained
in the plant at Lincoln, Neb. as you have to give evidence of

the apparatus contained in the plant of the Peoria Gas & Electric Co., have you not?

Objected to by complainant as incompetent, immaterial, and not cross examination.

A. Yes sir.

53. From your inspection of the Lincoln gas plant, describe what kind of a plant it is?

Objected to by complainant same grounds.

A. The gas plant at Lincoln contains either 6 or 7 benches of Mitchell furnaces built by the Laclede Fire Brick Co. of St. Louis, Mo. It also contains a water gas generator of the Springer type which was not built by any regularly organized company and therefore is slightly different than any standard piece of apparatus; it contains 4 purifying boxes approximately 20 feet square; a relief holder of about 60,000 cubic feet capacity and a storage holder of about 200,000 cubic feet capacity.

54. How old, in your opinion, were the boilers and engines used in the Lincoln gas plant at the time you made your investigation?

Objected to by complainant same grounds as before.

A. Two of the boilers were 1 year old; two were 8 years old, which I have since ordered shut down and thrown out; two other boilers are 8 years old also and will no longer stand rigid inspection by the insurance companies; they have cut us down to 80 pounds pressure and I have given instructions that those boilers shall be displaced as soon as the load is sufficiently light to warrant their displacement, which will be about in May of this year.

55. Where do you obtain the water in Lincoln, Neb., that you use in the boilers?

A. From a well on the premises.

611 56. What kind of water is it—what is it impregnated with if anything?

Objected to by complainant as incompetent, immaterial, and not cross examination.

A. The water is slightly impregnated with magnesia and lime, containing, I think, about 15 grains of solid matter per gallon.

57. What is the effect of water of that kind and character in contra distinction with water used by the Peoria Gas & Electric Co. in their boilers at Peoria?

A. I don't think the water would very greatly vary in amount of solid matter contained, but don't know the nature of the solid material contained in the water in Peoria; it is probably of the same general character, however.

58. Is there any salt in the water used in Lincoln, Neb.—impregnated with salt, I mean?

A. No, there is no salt of an appreciable amount.

59. When was the gas holder of the Lincoln gas plant erected, if you know?

A. I don't know.

60. Did you examine the records of the Lincoln Gas Company?

A. Yes, sir.

Mr. IRWIN: We object to that as incompetent, immaterial, and not cross examination.

The MASTER: The witness has already answered that he did.

61. From those records, what did you find the leakage to be in the distribution of gas through the mains in the city of Lincoln?

Mr. IRWIN: The complainant objects to that question on the same grounds.

The MASTER: I think it competent as cross examination; the witness testifies that that was one of the elements of cost in
612 the distribution of gas.

Mr. IRWIN: But the leakage at Lincoln would not necessarily be a type of the leakage in other places and I did not ask the witness about it on direct examination; if Mr. Mansfield wants to ask the witness where he got his knowledge about what the leakage is in the mains here, I don't object to it, but I object to his inquiring into the private business affairs of the Lincoln gas company or any other company for the reason that when you go into those business affairs it opens up the same investigation we have been making for the past two months with reference to the plant of complainant; we are trying this case on the issues in the city of Peoria and not upon what they might be in Lincoln or any other city.

Mr. MANSFIELD: Yet, you base the knowledge of your experts upon what there is in other cities.

Mr. IRWIN: The witness is here for cross examination on anything we have examined him about but I do not propose he shall be examined about things we have not brought out or examined about on direct examination.

The MASTER: I think it is Mr. Mansfield's method or way of getting at how the witness determines what percentage of leakage should enter into the cost of the distribution of gas; it is true that the question might be put in a different way but I assume this is Mr. Mansfield's way of putting it and I think it competent cross examination for the purpose of determining what percentage of leakage he figures in the cost of distribution of gas.

Mr. IRWIN: When you go into that it means the character of the construction of the whole plant, how long everything has been there and also of the main system.

The MASTER: I can see where it leads to but I assume it is Mr. Mansfield's method of asking about those things; the master
613 cannot say what the next question will be or how far the investigation on that point will go, but the witness testified

that leakage was one of the matters that entered into the cost of distribution of gas.

Mr. IRWIN: Well, I will instruct the witness that he has the privilege of refusing to answer, if he desires.

A. I am perfectly willing to answer the question if I could but I cannot answer it because our station meter was out of order for a long time and we had only the records of our consumers' meters and nothing to compare it with; but the leakage is running at the rate of about 150,000 cubic feet per mile of main reduced to a 3 inch basis.

62. How many miles of mains are there in the city of Lincoln?

A. I have not my data at hand and I could not answer that.

63. How much on a rough estimate?

A. I would assume there was about 35 miles.

64. You say that there is 150,000 cubic feet of gas lost per mile of main by leakage on a 3 inch basis—what do you mean by a 3 inch basis?

A. That means that a mile of 12 inch pipe would be counted as 4 miles of 3 inch pipe.

(The MASTER:)

65. During what period of time do you fix that leakage?

Mr. MANSFIELD: Just wait a minute, if it please the master.

The MASTER: The master wants you to understand, and also counsel on the other side, that any question he deems material he will ask and I want to know for what time—interrupted.

Mr. MANSFIELD: Damn the time; I don't think the master or anybody else has a right to interrupt me when I am asking questions.

The MASTER: It is the master's right to get all the information he can that he deems pertinent in the case; that is the duty
614 of the master and counsel ought to understand it and I want to know for how long a period of time the witness fixes this leakage, whether it is for a year, a month or what?

The WITNESS: A year.

(Mr. MANSFIELD:)

66. Explain what you mean by a 3 inch basis.

A. I mean that a 12 inch pipe—or any sized pipe larger than 3 inches—has a larger area for leakage and it is therefore customary in the gas business to reduce all pipe to a 3 inch basis when figuring leakage.

67. In stating the number of miles of mains then, did you reduce all 12 inch mains there were to a 3 inch basis?

A. No sir, because I don't know the actual number of mains there and I don't know what it would be on a three inch basis.

68. Approximately, knowing the size of the Lincoln gas works and the amount of gas that is distributed to customers in the city of

Lincoln, how many miles of 12 inch main would you estimate there were in the city of Lincoln?

A. There might not be any 12 inch main in Lincoln but I am inclined to think it would approximate 35 miles of 6 inch main or reduced to a 3 inch basis it would approximate 70 miles of 3 inch main.

69. Then you would say there would be 10,500,000 cubic feet of gas wasted in Lincoln on account of leakage through its mains?

A. The figures stated for Lincoln I don't think are exactly out of the way, you must remember, though, that when you state leakage it includes all unaccounted for gas, and unaccounted for gas consists of three things which ordinarily go under the head of leakage: First, false registering of customers meters. Probably out of every 18 meters 17 register wrong against the company. Another factor in leakage is the condensation of vapor contained in the gas.

615 Another factor is a change in temperature, the gas is generally measured on the consumers' premises at a lower temperature and hence at a smaller volume than when measured at the works.

70. In making your estimate of the cost of gas at 90 29/100 cents delivered to consumers in the city of Peoria what did you estimate the candle power of that gas to be at the point of consumption?

A. 18 candle power.

71. It is practicable, is it to furnish gas to consumers at the point of consumption of an 18 candle power?

Objected to by complainant as incompetent, immaterial, not cross examination, and also because the question is not limited to coal gas.

The MASTER: I do not think it proper cross examination but the witness may answer subject to the objection.

A. Yes sir, it is practicable.

72. You mean taking into consideration the gas that is manufactured here in the city of Peoria, do you?

A. Yes sir.

73. Would there be any difference in the estimated cost of the gas were the candle power of that gas reduced?

A. No material reduction.

74. In your estimate of the cost of the Peoria Gas & Electric Company's plant, what did you estimate the size of the retort house to be?

A. I did not make any estimate of the size *fo* the retort house; I merely made observations to know whether it was of sufficient size for the proper operation of 7 benches of 9's which are contained therein and found that it was.

75. Upon what estimate of the cost of the Peoria Gas & Electric Company's plant did you estimate the cost of the gas delivered to consumers?

low candle power gives a better light through the incandescent burner than high candle power and also gives better satisfaction in the various heating and cooking fixtures for the reason it is not so apt to throw out soot and don't fill up the mixers so readily;
638 at the same time for that part of gas used through the open unprotected burner the higher candle power is more satisfactory but for the larger part of it that is not used in open burners it is cleaner and gives better satisfaction, that is I mean the lower candle power.

43. State if in your judgment the furnishing of gas, which would have an 18 candle power at the point of consumption at a distance of from 1½ to 2 miles away from the plant, would be satisfactory to persons using gas from the same pipe situated near the plant, and, if not, why not?

A. A gas which would yield 18 candle power 2½ miles from the works would probably yield 19 or 20 candle power close to the works, especially in cold weather would that difference be noticed; those customers who were using the gas in open burners would be glad the candle power was above requirement and those using it to cook with or in incandescent burners would complain that the gas was too rich and smokey.

44. About what proportion of open burners are now used in the entire consumption of a gas company's output?

Objected to by defendant as immaterial, incompetent and not tending to prove the issues in this case.

A. I should say that certainly not more than one third of a company's output is used through the open burner.

45. State if in your opinion it is practicable to furnish gas of 18 candle power, measured at a distance of from 1½ to 2 miles from the works, without the use of enrichers?

Objected to by defendant as immaterial and incompetent and on the ground the witness has not qualified himself as an expert with reference to the manufacture and distribution of coal gas.

A. It is impossible to get that candle power of gas out of any gas coal that I know of without the use of cannel, or the use of oil for enriching.

639 46. What effect does the use of cannel coal or oil for enriching have upon the cost to the company of the gas furnished?

A. It makes it more expensive, of course?

47. What candle power of water gas is required to give the public a service as satisfactory as 18 candle power in coal gas?

Objected to by defendant same grounds.

A. It is generally considered that it takes a 22 candle power water gas to be equal in general satisfaction to an 18 candle power coal gas.

A. The retorts themselves, the clay retorts, have to be replaced with new ones about once every two or three years; that is always counted as repairs, but in from 10 to 20 years the arches which hold the retorts will have to be torn down and rebuilt and that is called depreciation.

55. What difference would there be between repairs and depreciation, for instance, in the holder?

641 A. A holder must be kept painted continually and that is repairs; if it springs a leak it must be patched, that is repairs, but the time will come when the sheets themselves will be rusted so thin they can no longer be patched and that must be covered by depreciation.

(The MASTER:)

56. There is a point I have been in doubt about all the time. Is this depreciation due to the peculiar character of the business, or is it a depreciation that would naturally follow if this same material was employed in another business?

A. It would follow no matter in what business the material was employed; you might build out of granite and it will last, you might say, forever; you build out of hard brick laid in Portland cement and it will last indefinitely, but where you build out of thin iron or build out of iron and nothing else on the inside to resist the action of acids the time will come when it will be entirely eaten up and that is peculiar to the gas business.

(The SAME:)

57. Does that work a more speedy deterioration than if it was employed otherwise?

A. It works more speedily than it would work in some classes of business, but any business which produces acid vapors, all the iron work connected with that business is liable to the same depreciation, and iron work employed in the gas business is liable to it.

(Mr. ABBOTT:)

58. Then, if I understand you correctly, even if a plant were kept in good general repair, this element of deterioration would still be a necessary element to consider in arriving at the cost of producing and distributing gas?

A. Yes sir, a time comes when your plant will be utterly worn out and unless provision is made for it you will have no fund with which to rebuild it; over and above running repairs depre-

642 ciation must be provided for.

59. Taking into consideration these various elements of depreciation you have mentioned, general decay and special causes, such as electrolysis, and the necessity for replacement of material and equipment, even where general repairs are made, and taking into consideration your experience and observation in respect to the renewal and rebuilding of plants, mains, etc., what in

your opinion, does good business policy require should be done to take care of this depreciation?

A. There should be an annual charge of a certain per cent. against the cost price of all that part of the plant which is subject to depreciation.

60. How is this fund, which is set aside, handled as a matter of general practice?

A. It is generally put right back into the business but the cost of the various parts and the plant as a whole appears at a less price every year owing to a charge off being made.

61. What in your opinion would be the proper percentage on the entire cost of a gas plant located in a city like Peoria, to be charged off annually in order to cover this general average depreciation of a plant?

A. It should be about 5 per cent. on the apparatus, buildings and mains exclusive of the real estate; that would assume it was all going to last 20 years and parts of the gas plant would not last nearly that long; a gas plant that is 20 years old is mighty apt to be out of use and has to be replaced.

62. That is a fair average charge, is it?

A. Yes sir.

63. Aside from the general depreciation concerning which you have testified, what are some of the hazards of the gas business as an investment, that is, the hazards an investor of money
643 would take into consideration in determining whether he would invest in a gas plant or something else?

A. One of the serious hazards is the likelihood of explosions and asphyxiation, for they have them on a very large scale, and a very large part of the plant of a company might be wiped out by damage resulting from an explosion. Another hazard is the change in the methods of manufacturing gas which may make your whole plant almost useless; also the constant discovery of new methods of lighting and heating by people may make your product unsalable even though your plant was still in good order. During my own memory the cheapening of coal oil was a very serious blow to gas companies and they had hardly recovered from that until the invention of the electric light came along and they have never quite recovered from that; and now, we are told we will have acetaline lights, electric heaters and hot water heaters. In other words, the inventive genious of mankind is continually working at problems which if solved might render a gas plant useless and a loss on the hands of the owners. Besides, wherever there is any possibility of finding natural gas, there is a very serious liability that a plant which is furnishing artificial gas may be rendered useless.

64. Is the possibility of the granting of franchises to other companies at any time also a hazard of the business?

A. It is always with us and liable at any time to cause a war of rates which will destroy profits for a certain number of years even if the company itself survives.

65. From your experience and observation in the matter of the management of gas plants and experience in the gas business, are you able to state what would be a reasonable and fair return to investors in gas properties, taking into consideration the hazards of the investment on account of the conditions and dangers con-
644 cerning which you have testified?

A. I have a very well formed opinion on that subject but its value would have to depend on how much value people put on my judgment.

66. What in your opinion would be a fair and reasonable percentage per annum on the cost price of the entire plant as a return to investors in the gas business considering the hazards and dangers about which you have testified?

Objected to by defendant as immaterial and incompetent.

A. In a part of the country where a man could loan money on a good mortgage at 6 per cent., he would be a great fool to buy gas stock unless it paid him as much as 8 per cent. per annum. The risk is considered less in a large city than in a small city.

67. Have you in the course of your connection with gas companies acquired information in a general way with reference to natural gas?

A. Yes sir, I know a good deal about natural gas for the company I manage furnishes natural gas very largely.

68. Is there any difference in the cost of the distribution of natural gas as compared with the cost of distribution of artificial gas, if so, state in what that difference consists?

Objected to by defendant as incompetent, immaterial, and not tending to prove the issues in this case.

A. The cost of distributing natural gas is much less which is partly due to the physical qualities of the gas itself; there is not the same condensation from natural gas; there are not as many complaints to answer. In fact a natural gas company is not usually compelled to keep a complaint force at all. Besides that, and an item of equal importance, is the fact that the number of cubic feet consumed by each customer is usually three or four times as
645 great with natural gas as it is with artificial gas, so that, the cost of looking after each service and each meter being about the same the cost per thousand cubic feet would be very much less.

69. As I understand you, it would spread the fixed expense over a large area?

A. Yes, but as a matter of fact you can take care of 2,000 meters delivering natural gas for less money than you can take care of that number of meters delivering artificial gas.

70. Is there any difference in the pipes?

A. Practically none; pipes have to be laid the same no matter which gas is delivered.

71. What is the effect of all these causes which you have given

on the cost of distribution of natural gas compared with the cost of distribution of artificial gas?

A. It makes the cost of distributing natural gas very much less. I was mistaken in my last answer. There is no difference in the laying of pipes but, as a matter of fact, natural gas is universally sold under higher pressure than artificial gas and it enables you to use smaller pipes and it materially affects the matter of investment in the distributing mains, and therefore the annual interest.

72. Do you know in a general way the average price at which artificial gas is sold in the cities of the United States which have a population of 50,000 and upwards?

A. Yes, I have such knowledge.

73. State what is the average price of artificial gas throughout the United States in cities of 50,000 inhabitants and upwards?

Objected to by defendant as immaterial, incompetent and not tending to prove the issues in this case.

The MASTER: I do not see the meteriality of it but the witness may answer subject to the objection.

646 A. It will be between $1. and $1.15 per thousand; most of them charge about a dollar and some of them charge higher than that per thousand cubic feet.

74. Do you know of any cities where less than a dollar per thousand cubic feet is charged in cities of 50,000 and upwards?

Objected to by defendant same ground.

A. Yes, sir, there are several, viz: Cincinnati, Toledo, Pittsburg and some others; there are five or six; I do not recall them all just now.

75. What, if any conditions are there concerning the cities you have mentioned which tend to cheapen the cost of the manufacture of gas in those cities?—for instance Pittsburg?

Objected to by defendant same grounds.

A. Pittsburg is the headquarters for gas coal in the United States; there is also a ready market for coke and the conditions for making a distributing gas are very favorable.

76. What about the extent of consumption?

A. The consumption is very large and very concentrated; the city is closely built up and the number of consumers per mile of main would, I think, be large from what I have seen of the city.

77. What conditions exist in Cincinnati which would have a tendency to cheapen the cost of manufacturing gas there?

A. Cincinnati is a very crowded city, its streets are narrow and closely built up and the amount of gas which can be distributed over a certain number of miles of main is very large; in addition, to which, its works are right on the river, the coal is stored in barges afloat so it does not have to be touched with a shovel except when it is put into the wagon which carries it to the retort and there

is a very large consumption per head of population and per mile of main. Besides that, Cincinnati being on the Ohio river immediately below Pittsburg gets gas coal very cheap. I do not
647 know the local conditions at Toledo.

Cross interrogatories by Mr. MANSFIELD:

1. What do you mean when you say the conditions are very favorable for the distribution of gas in Pittsburg?

A. I think I answered that in reply to the question in chief. The city is closely built up and therefore the consumption per mile of mains would be large enabling a smaller force of men to look after the distribution of a larger quantity of gas.

2. What do you mean by the city being closely built up?

A. I mean the streets are narrow, the houses built close to the property line and on small lots as a general proposition, and several stories high, so there would be a good many meters in each house; I would refer also to the facility with which good gas coal could be obtained in Pittsburg.

3. What is the cost of gas coal in Pittsburg?

A. I don't know but I know the rest of us have to buy it there and ship it.

4. Do you know that there is any difference between the cost of gas coal in Pittsburg and the cost of gas coal in Peoria, of your own knowledge?

A. I don't know that there is, but I would assume that coal brought from Pittsburg to Peoria would cost more in Peoria than in Pittsburg but I don't know that it does.

5. What is the selling price of coke in Pittsburg?

A. I don't know.

6. Do you know whether or not the selling price of coke in Pittsburg is any greater than the selling price of coke in Peoria?

A. I should think it would be higher in Peoria but I don't know it.

7. Would you think, then, that the difference between the selling price of coke in Peoria and the selling price of coke in
648 Pittsburg would make any difference as to the relative price of the gas manufactured in Peoria and Pittsburg respectively?

A. If there were such a difference, it would tend to have that effect. The presence in Pittsburg of a very large number of manufacturing establishments which use coke, would tend to keep up the price of coke in Pittsburg, but the amount of coke for sale from a ton of coal is usually hardly as much as half a ton so that a small difference in the price of coke would not make up for a large difference in the cost of coal.

8. What is the percentage of coke obtained from the distillation of a ton of coal?

A. Do you mean the amount obtained or the amount left for sale after heating the retorts?

9. I mean the amount obtained?

A. Usually about 1320 pounds.

10. What would that be expressed in percentage?

A. 66 per cent.

11. What coal gas plant have you been connected with in the United States?

A. I stated in chief I was never connected with any coal gas plant; I have been compelled, however, in keeping up with my own business—that of distributing natural gas and water gas—to keep generally informed as to the manufacture of coal gas, also.

12. You have stated you examined the plant at Terre Haute, Ind. When you examined that plant in Terre Haute, how long did you take in an examination of it?

A. Two or three hours; I did not examine it critically; I just went through it and looked at it for information.

13. What kind of a plant was that?

A. At that time it was a coal gas plant and my recollection is they had a water gas supplement to be used if they needed it
649 but they were not using it then.

14. How long ago was that?

A. About eight years.

15. When did you examine the plant at Boston, Mass.?

A. About two months ago.

16. How long did you take in your examination of that plant?

A. About two hours.

17. What is the size of that plant compared with the size of the Peoria plant?

A. I expect it is about 20 times as big.

18. How long did you take in your examination of the Peoria plant?

A. About an hour and a half, that is, of the manufacturing plant.

19. You stated you examined the plant at Cincinnati, how long did you take in an examination of that plant when you examined it?

A. I spent about a half a day in their retort house very much entertained and interested.

20. Was that the only portion of the plant you examined at the time?

A. By the retort house I mean the retort house and works connected with the retort house; the plant runs all over the city and nobody could examine the mains because they are concealed, but the retort house and the houses connected immediately with it are the parts a man would naturally look at when he goes to see the plant and that is what I mean when I say I examined the plant.

21. You stated that Exhibit "1" as shown you is a correct representation of the manufacturing plant of the Peoria Gas & Electric Company, so far as it can be shown upon a plat. Is that true?

A. That is my recollection of my answer and that is true.

A. Does the question refer only to the manufacturing plant or to the plant as a whole including mains, services and meters?

20. Only to the manufacturing plant.

A. I am fully competent to answer that question.

21. On the basis referred to in the former question from your investigation of this plant and your knowledge of the cost of the construction of similar plants and your knowledge of the cost of the various items of machinery, materials, apparatus and equipment entering into a gas plant during the years 1899 and 1900, you may state what in your opinion was the fair cost price of the manufacturing plant proper of the Peoria Gas & Electric Company in the open market.

Objected to by defendant as immaterial and incompetent for the reason the witness has not qualified himself as an expert with regard to coal gas plants and has not testified that he knows the cost of labor and materials entering into the construction of such a plant laid down in the city of Peoria.

A. I have not made any detailed estimates of the cost of the whole of that manufacturing plant; I have, however, gone over the statement which the officers of the gas company keep as to what it actually did cost and with the single exception of the fire clay material entering into the construction of the retorts I am able from my own experience to say whether or not those statements of cost represent fairly the actual cost of those buildings; my opinion is that the buildings were constructed in a reasonable and economical way and that the buildings, apparatus, holder, sheds and all would cost just about the price at which they are charged in the cost state-
631 ments; as to the retorts themselves, I have lately investigated for my own use the cost of putting up a lot of retorts for making coal gas and the price which those retorts are stated to have cost corresponds very closely with the price I found I would have to pay if I built a bench of them.

22. Was the cost given you by the company, or any of its officers to which you have referred in your answer to my previous question, if so state what it was?

A. It was given to me by Mr. Little, vice president of the company and he showed me the vouchers for each separate item; I have bought similar material and the vouchers were just about what such material usually has cost our company and the material is not manufactured either here or in Louisville, it has to be shipped wherever it goes, so the only way it would vary would be in the matter of freight and cost of erection, depending on the cost of labor in different places.

23. Were you advised by the company, or any of its officers, as to the sizes and lengths of the various mains and services laid by complainant company?

Objected to by defendant as immaterial, incompetent and not tending to prove the issues in the case.

A. I was given a statement by Mr. Little of the number of lineal feet of each size of main the company now has.

24. Are you familiar with the cost of gas pipe in the open market in the years 1899 and 1900, and have you had experience and knowledge as to the cost of laying such pipe in ordinary streets and in paved streets?

A. I was buying pipe and laying pipe during that time myself and am familiar with its cost.

25. What were the lengths and sizes of the company's mains as given to you by the officers of the company?

632 A. (Witness referring to notes.) There were 1758 feet of 16 inch main, of which 160 feet is under pavement; 20,768 feet of 12 inch main, of which 11,225 feet is under pavement; 3,482 feet of 10 inch main, of which 58 feet is under pavement; 20,224 feet of 8 inch main, of which 13,234 feet is under pavement; 12,874 feet of 6 inch main, of which 5,474 feet is under pavement; 80,852 feet of 4 inch main, of which 9,792 feet is under pavement, and 260 feet of 2 inch main, none of which is under pavement. I used these figures in estimating the cost of the main system.

26. From what you have been informed as to the length and sizes of the mains and from your knowledge of the cost of such pipe, and assuming that the same were laid during the year preceding September 1, 1900, and that the cost of ordinary labor in the city of Peoria during that time was $1.50 per day, state what in your opinion would be the fair cost of those mains and the laying of them ready for use?

A. My estimate totals $122,766.

27. Were you informed also as to the number and extent of the services, if so, what information was given you in regard to them?

A. Mr. Little informed me that the company had three 3 inch services, total length 872 feet; 2—2½ inch services, total length 374 feet; 652—2 inch services, total length 37,244 feet; 1503—1¼ inch services, total length 111,369 feet; 266—1 inch services, total length 29,393 feet, making a total of 179,252 feet.

28. Assuming that the service pipes of the Peoria Gas & Electric Co. are of the sizes and lengths which you have given in your answer to the last interrogatory, and that the same were laid during the year preceding September 1, 1900, and that the cost of

633 ordinary labor during that time was $1.50 per day, from your knowledge of the cost of such material, will you please give your opinion as to the fair cost of the service pipes of said company, including the expense of laying the same ready for use?

Objected to as immaterial and incompetent.

A. I figure that those services would cost $39,154.

29. Assuming that on September 1, 1900, the meters of the Peoria Gas & Electric Co. were 1,758 in number, what in your opinion would be the value of the said meters including the setting and making them ready for use on September 1, 1900?

A. Of course, the sizes of the meters would enter very largely into that calculation; I am informed that 413 of the meters were 5-light, 1217 were 5-light, 93 were 10-light, 12 were 20-light, 14 were 30-light, 6 were 45-light, one was 60-light, one was 100-light, and one was 150-light. My estimate of the cost of that number of meters of those sizes amounts to $14,290, which includes the setting and placing of the meters.

30. In answer to my question in relation to the cost of the manufacturing plant proper, you stated that you had examined the vouchers representing the different items of cost and that in your judgment they represented the actual cost of such material and equipment—what was given you, if anything, as the total cost of the manufacturing plant proper?

A. $107,480; if I had made an independent estimate I would not have arrived at exactly that figure; the chances are I would have missed it as much as 10 per cent. one way or the other; a great deal of the material is underground where it cannot be seen, but those parts which I could see and the value of which I do know, the vouchers for them corresponded very closely to my knowledge on that.

31. I will ask you whether that estimate, or your information, included any value for the real estate?

34 A. It did not.

32. Have you given any value to the real estate in answering any of the questions relating to the value of this plant?

A. I have not given any value on the real estate at all; I have been asked no questions about that. As to the buildings, before I was connected with the gas business at all, I was an architect and afterwards a contractor and my judgment on those is very good. As to the parts of the plant which I have bought myself, of course, I could compare the vouchers shown me with my own knowledge.

33. In your estimate given as to the cost of the plant, mains and services of the Peoria Gas & Electric Co., have you included in your estimate any amount for the legal organization of the company, the equipment and organization of its business force, cost of advertising, solicitors, etc., and the general expense of putting the plant into operation?

A. I have not; I took the plant just as it stood if a man undertook to duplicate it.

34. In your judgment, would the expense, to which your attention has been called in the last interrogatory, so far as your observation goes, be generally and necessarily incurred in the organization of a company and getting the plant into operation?

A. They constitute an absolute and necessary part of the organization and construction of any gas plant, and what is more, they constitute a very large part of it.

35. Are they properly considered as part of the cost of a plant?

Objected to by defendant as incompetent and immaterial.

A. They are always charged as such and in my opinion they are properly so charged.

635 36. From your inspection of the plant, and your knowledge of the cost of the construction of similar plants, and assuming that this plant of the Peoria Gas & Electric Co. was put in operation for the manufacture and sale of gas to consumers on May 1, 1900, and assuming further that the cost of the real estate upon which the said manufacturing plant is located, was $51,000., that the cost of the legal organization of the company, the equipment and organization of its business force, cost of advertising, solicitors, etc., and the general expense of putting said plant into operation was $42,000., what, in your opinion was the fair cost price of that plant?

A. I would say it would be about $435,000. or $440,000. I reinforced my judgment on the matter from the estimates I made on certain parts of it or on nearly all of it, in fact, and the company's statement as to the cost of other parts.

37. On the same assumption as given you in interrogatory 36, and assuming further that on September 1, 1900, after about 4 months of operation, it was manufacturing and selling gas to consumers at the rate of 50,000,000 cubic feet per annum, what, in your opinion was the fair market value of the entire manufacturing plant, mains, services, meters, office equipment and equipment of every kind, which might properly be considered a necessary part of the plant, assuming that the same as existing and in operation, was sought to be purchased by parties having the need of such a plant, and having the right to operate the same, excluding from your estimate of the market value, any value which might lie in the license or franchise of the company?

A. Well it would be worth the cost of duplication, together with an additional sum, dependent on the prosperity of its business and future prospects. I should say its market value would lie between $450,000. and $500,000.

636 (The MASTER:)

38. What is the fair market value of the physical property itself independent of future prospects?

A. About $435,000.

(Mr. ABBOTT:)

39. What length of time would ordinarily be sufficient to put a new gas plant into operation so as to enable it to work economically and develop the economies of which it is capable?

Objected to by defendant as immaterial and incompetent on the ground that the witness has not qualified himself to give expert testimony with regard to the manufacture of coal gas by a plant which is exclusively of that nature.

A. I would rather not answer that question because I do not consider myself competent to do it.

40. Assuming that the Peoria Gas & Electric Co., commenced the manufacture and delivery of gas to consumers on May 1, 1900, and assuming further that the character of the plant and the lengths and character of its mains and services are as appear in the preceding part of your testimony, and that the cost of Youghiogheny gas coal at the works of the company was $2.80 per ton, that the wages of labor were $1.50 per day for ordinary labor, $65.00 per month for general stokers and $70. per month for the head stoker; assuming further that the purchase of material is general, and the expenses of general operation were fair and reasonable, considering the location of the plant, that the management and superintendence of the plant was efficient and competent; and assuming further that said plant had been in operation a sufficient length of time to put into smooth operation the economies of which it was capable, and that it was manufacturing and selling gas at the rate of 50,000,000 cubic feet per year, what, in your opinion, would be the actual cost per thousand cubic feet of the gas manufactured and delivered to consumers by said company, excluding from
637 your estimate the value of residuals, and excluding also any charge for depreciation or interest on the investment.

Objected to by defendant same grounds as before.

A. My opinion is that the item of coal to the thousand feet of gas would amount to 28 cents; the item of labor would amount to 18 cents; the item of taxes, based on information as to what the taxes actually are on this plant, would amount to 11 cents, and the item of distribution would amount to 44 cents, making $1.01 not allowing any credit for residuals.

41. What candle power in coal gas is deemed most satisfactory for ordinary use by the consumer?

Objected to by defendant same grounds.

A. Most gas men say about 18; my own opinion is that 16 is better.

42. Please give the reasons why in your judgment a 16 candle power is more satisfactory to the consumer than coal gas of a higher candle power?

Objected to by defendant same grounds.

A. At the time when the candle power of gas was fixed in the charters of most gas companies, there was only one way of obtaining light from gas, which was through the open, fishtail burner, and very little gas was used for fuel; today a very large per cent. of the output of every gas company is used for fuel and more than half of that sold for light is used through incandescent burners which not only do not derive any benefit from the high candle power of gas, but are actually at a disadvantage on account of it, a comparatively

(The MASTER:)

48. What do you mean by general satisfaction?

A. For illuminating purposes; for heating purposes it would take a higher candle power than that.

(Mr. ABBOTT:)

49. From your experience, knowledge and observation of the gas business will you please state what elements, forces and causes, if any, tend to depreciate a gas plant and its pipes under the ordinary conditions which exists in all cities having a population of about 50,000 and upwards.

Objected to by defendant as assuming that the conditions as affecting gas pipes are the same in all cities having a population of 50,000 and upwards.

A. Well, there is expansion and contraction due to heating and cooling; there is the action of the acids from the coal; there is rust and as applied to the rust on the iron work, disintegration of the masonry, and as applied to the mains, there is both rust and electrolysis.

50. What depreciation takes place, if any, in the plant itself, and the different parts of its equipment?

A. I included that in the first part of my former answer, and I should add that as to the mains there is the action of water, acid salts and aceline salts, especially where the ground is filled with refuse, mains deteriorate very rapidly.

640 51. Is there any depreciation from the weat and tear on the machinery?

A. Yes, sir, that is one of the first items—moving parts wear out.

52. State if there is a depreciation in a gas plant outside of the question of repairs made from time to time from the fact that the different parts may become unfit for use, or it may be necessary or economical to replace them with new appliances—state in what manner that element of depreciation appears, if there is such?

A. Assuming that every part of the plant is kept in as good repair as you can keep it in, there will a time come when any machine or any piece of apparatus, will be either so worn out or so rusted out that it is no longer capable of repair without spending on it more than the cost of a new one. In other words, there is a constant depreciation going on which is not prevented by complete and thorough running repairs.

53. If I understand you correctly, then, this depreciation of which you speak, is something which is distinct and separate from the general repairs to a plant which is going on all the time?

A. Yes, it is in addition to the general repairs.

54. Will you distinguish and illustrate further what you mean by the difference between repairs and depreciation. For instance, in the retorts themselves?

which I referred to the cost, I meant the general market value or cost of such materials in the open market at the time specified. Are you familiar with that in general?

A. Yes sir, I know at about what price they could be purchased at that time, for I purchased some myself.

17. From your inspection of the plant of the Peoria Gas and Electric Co. and assuming that it was built and constructed during the year preceding September 1, 1900, and from your observation of the location, character and size of the city of Peoria, what is your opinion of the plant of the Peoria Gas & Electric Co. with respect to its fitness, size, character and equipment for the manufacture and sale of gas in said city, taking into consideration
629 the element of future growth?

Objected to by defendant on the ground that the witness has not shown himself qualified to give an opinion concerning a coal gas plant, never having been connected with one in any capacity.

A. The plant is excelentlly designed; it is very compact and shows a great deal of study and forethought in the way it is laid out; the buildings are all constructed very substantially and of fire proof material, the apparatus is all of good quality, well located, well connected up and well constructed; I should call it a first class plant in every particular for its size; there has been no money wasted in the construction of the plant; there is not a sign of any money spent on ornamentation or on buildings or apparatus more expensive than necessary.

18. Would you say from your inspection of the plant and from your knowledge of the gas business that it is for its size a modern up-to-date gas plant?

Objected to by defendant same grounds as before.

A. I should say it was.

19. From your examination and knowledge of the plant of the Peoria Gas & Electric Co., from your examination of its plant, from your knowledge of the construction of similar plants and from your knowledge of the cost in the open market, during the years 1899 and 1900, of the various items of machinery, materials, apparatus, equipment and labor entering into the construction and operation of a gas plant of the capacity and character of the Peoria Gas & Electric Co., are you able to state what would be the reasonable cost price of the manufacturing plant of the Peoria Gas & Electric Co., assuming that said plant was constructed during the years 1899 and 1900, and that the various items of machinery apparatus, materials, equipment and labor were purchased in the open market?

630 Objected to by defendant as immaterial and incompetent on the ground the witness has not qualified himself as an expert to give evidence concerning a coal gas plant?

the 5 per cent., which I assume you to mean is 5 per cent. on the total cost of the plant, in this case $434,000.—interrupted.

A. The cost of the plant except the real estate I said.

62. You would expend that 5 per cent. in the betterment of the plant?

A. A company would do that as long as it was a growing company and nearly all companies are growing companies; of course, if a plant ceases to grow and it was impossible to find an investment for that depreciation fund that way, then it would have to be invested in some safe bonds.

63. In doing that, you would charge up to construction account of the plant the amount of money that was represented by the yearly investment of the 5 per cent. per annum depreciation?

A. No.

64. What would you do with that?

A. I never kept a set of books in my life.

65. How would you account for that money?

A. Well you would have the additional mains, meters and other things on hand to show for it—yes, you would have to charge that to plant to the extent you spent it and charge it away from
660 plant to the extent of the depreciation; the two accounts would balance themselves. I am not a bookkeeper.

66. Then at the end of each year, you would still continue to charge upon the cost of the plant the 8 per cent. which you think should be allowed to investors upon the amount of money invested in the construction of the plant?

A. I would endeavor, if possible, to pay my stockholders a dividend but, if I could not do it, they would have to do without it until another year.

67. Then, is it not a fact that at the end of 20 years you would have a sum on hand represented by your 5 per cent. yearly depreciation and your 8 per cent. charge as a fair return upon the amount invested in the plant, making more than the total cost of your plant at the time the same was constructed?

A. A plant which in the course of 20 years would not earn as much or more than what it cost to build it to start with would be a poor plant—interrupted.

68. You don't understand my question.

A. Let me finish and see if I don't come to what you want. If you pursue the policy to the end of always reinvesting the amount of money which was charged to depreciation, you would finally have a plant about double as big as the one you started with, but the same capitalization, the difference between the two being represented by the fact that the older parts of the plant are now worn out and will have to be rebuilt; but it is not always practicable to reinvest in betterments the amount charged to depreciation unless your business is a very rapidly growing one, and even then such an item as the rebuilding of the stacks in a retort house will not be a betterment but will be replacing something that has been destroyed in

use. Unless the business was growing, however, you would be
661 compelled to invest your depreciation account in some securities which could be readily turned into cash so as to have it on hand to be used in replacing the old retort house or any part which might become useless.

69. The total value of the plant, as you have testified in this case, is about $434,000. including real estate, as I understand it and deducting that real estate it would leave it $383,000. You mean then to charge 5 per cent. each year upon that $383,000. for depreciation, do you not?

A. Yes sir.

70. Which would make about $19,150. each year?

A. Yes sir.

71. Now, as I understand you, you place that back into the enlargement or betterment of the plant?

A. So far as it is not consumed by the replacing of worn out parts and during the earlier years of the plant's existence it would not be consumed that way.

72. You then charge it up to construction account, do you not?

A. Yes sir.

73. And it enters into the cost of the plant in order that at the time the original plant is worn out you will have a sum represented by this amount of money that is taken for depreciation to rebuild your worn out plant, do you not?

A. As the time approaches when important parts of the plant will have to be replaced unless you issue additional securities you would not be able to divert the depreciation money and put it back into extensions, otherwise you would come up against the time when an important renewal was absolutely necessary and have no money to make it with; as this time approaches that fund would have to be put aside in actual cash or securities so as to be available when needed.

74. Having charged that to construction account, to the
662 total cost of the plant, then in your opinion the stock holders or investors should be allowed 8 per cent. on the total cost of the plant which in this case would be represented by $383,000. and $19,150.?

A. You would put the $19,000. in as extensions and charge it off as depreciation, leaving your plant the same size it was before.

75. Then, upon that $383,000., to which was added $19,150. you think that the investors should be allowed 8 per cent. annually upon that amount of money, do you?

A. You are wrong in adding the $19,150. to the original cost because while it is put on as a betterment it is at the same time charged off as a depreciation and does not alter the total. I think that in a country where a safe mortgage will bring 6 per cent. gas stock ought to pay 8 per cent. otherwise I would not buy it.

76. Would you say gas stock should bring more interest on the

investment than would make that gas stock worth $100.00 in th
open market?

A. As a general proposition, a gas stock which pays a dividen
one or two per cent. above the current rate which can be realize
from perfectly safe securities, will be worth between $100. and $11
dependent on what the public opinion is of the future of the com
pany; leaving out the question of the future of the company, th
stock would not be worth par.

77. In the event that there would be no necessity for the enlarg
ment or betterment of the plant of the Peoria Gas & Electric Co
in that event what would you do with the 5 per cent. or the $19,15
which you deduct on account of depreciation?

A. I would buy city bonds with it, provided they were free fro
taxation.

78. Is it not a fact that if you did buy city bonds which woul
net an interest of 5 per cent. per annum that at the end of 20 year
you would have more money than your original plant cost
663 A. No, because the money would have been consume
from time to time in renewing first all your meters and nex
the retorts and stack.

79. I didn't ask you about that.

A. You asked me a question which involves that answer.

80. Just wait a minute and we will find out about this?

A. I will say no sir, you would not have that money.

81. (Interrogatory No. 78 repeated to witness.)

A. No, you would not have that amount of money on hand be
cause it would have been consumed from time to time in replacin
parts of your apparatus which had worn out and had become neces
sary to replace.

82. Would that be true if you had invested that money in cit
bonds?

A. Yes, you would have had to sell your bonds to make you
renewals.

83. What is your estimate of the average life of a meter?

A. It varies a great deal, depending on the locality in which it i
placed and the dampness of the atmosphere, but 10 or 12 years i
probably the average life of a meter.

83. Then you could have this money invested that way for 10 o
12 years, could you not?

A. That part of it which was due to the depreciation of th
meters, yes sir.

84. What are the bi-products obtained from the manufacture o
coal gas?

A. Coke, tar and ammonia.

85. Are there any other bi-products obtained from the manufact
ure of coal gas have a commercial value?

A. None that has such a commercial value as to be worth savin
in a plant of ordinary size; they get a little cy-nogen out o
664 the spent oxide but the quantity is not sufficient to justify
works of ordinary size in arranging to save it.

86. What if anything do they obtain from the sale of the sulphide of iron when it becomes so saturated as to be practically worthless in the manufacture of gas?

A. I don't know; it is so small it is not included in the returns of one gas company in fifty; I know however they do get something.

87. How often do they clean their retorts?

A. I don't know.

88. What, if anything, do they obtain from there that is of value?

A. They get very hard carbon out of it which they sell to the manufacturers of electric light carbon.

89. About how much do they obtain from it?

A. I could not tell you that; it is small, however; the only way I know it is small is it does not figure in the commercial reports of the various companies.

90. What do you compute the cost to be of the tile roof of the purifying house?

A. I did not figure it; I simply considered it as a fire proof building; it is, however, the very best character of a roof which can be possibly put on a building to be used for that purpose.

91. What did you estimate the cost of the office building at?

A. I made no estimate on that building; the building which contains the office and the shops is put down at $4,400. and from what I saw of that building I should say that was a conservative estimate of its cost.

92. What was the size of the walls of that building—do you know?

665 A. I do not; they appeared to me to be 17 inches for the two story parts and 13 inches for the one story parts; that is what they ought to be anyway.

93. What was the size of that office building?

A. You mean the part occupied by the office alone, or the part occupied by the office and shops?

94. Office and shops.

A. I did not measure it but I can take the plan and measure it for you, if you would like me to.

95. Did you estimate it from the plan?

A. No sir, and I could not tell you the size of the house I live in but I could tell you what it cost to build it, for I have built one like it.

96. What were the footings of that building composed of?

A. I could not say, they were underground.

97. What was the thickness of them?

A. I don't know that either.

98. And yet, from a view of the office building you can approximate what the cost of the building was, can you?

A. Yes sir, from my general knowledge of the art of building; I would not undertake to construct a house for a certain sum without making a much more careful examination of it than that but if a man tells me a house has cost so much I don't need to take a tape line and go over it to know whether or not that is probably true.

99. Would you buy a house without going through the hous and looking at the various materials of which it is composed, th size of the foundation, etc.?

A. I did buy one very lately that way and made one of the bes bargains I ever made in my life and I did not measure
666 & 667 thing in it.

100. What would you estimate the cost to be of a on story shed of the following dimensions? "50 feet by 125 feet by 2 feet high, brick piers for footings 5 feet by 5; iron plates 20 inches b 20 inches by 1 inch thick, and posts 12 inches by 125 inches; ri girders 6 inches by 12 inches; rafters 2 inches by eight by 16 inche on center; gravel roof; braces 6 by 6 inches; all anchored togethe with 1 1/8 8 inch rods all boarded up inside with 2 inch plank a the way up"?

A. That shop has in it 150,000 cubic feet and it is worth abou 4¼ cents a foot—I should say about $6500. to $7000. and if would attempt to make the same estimate by going out and coun ing the lumber that is in it I would want three or four hours to d it or a half a day.

101. How much pipe did you buy during the years 1899 an 1900,

A. I really could not tell you; I bought a good deal of wrough iron service pipe and a few thousand feet of cast iron pipe.

102. What size cast iron pipe did you buy?

A. 16 inch.

103. How many thousand feet did you buy?

A. About 2,000; we laid very little mains that year.

104. What aside from what would be generated in and about th gas holder of a gas plant, would cause the gas holder to rust?

A. Sulphuric acid which comes from the gas from the sulphur i the coal which ought to be thoroughly eliminated in the purifyer but it acts on all of that part of the apparatus before the purifyer and that part of it that goes past the purifyers gets on the holde

105. To what extent is there sulphuric acid in the gas after goes through the purifyers to the holder?

668 A. The percentage is very small but it is enough to get o the iron.

106. About what is the percentage?

A. What chemists would call a trace; then, too, whatever am monia comes over in the gas saturates the water the holder rests i and that makes it act very rapidly on the iron work of the hold wherever the holder is submerged in the water; the water in th holder pit nearly always has an odor as if of ammonia and the iro work which is constantly submerged in it rusts very rapidly.

107. What do they pay for gas coal in Cincinnati?

A. I don't know; they pay the Pittsburg price plus the cost towing it in large flows of barges.

Adjourned by agreement until Wednesday, January 8, 1892, 10 o'clock a. m.

669 United States court room, Government building.

PEORIA, ILL., WEDNESDAY, *January* 8, 1902—10 a. m.

Parties met pursuant to adjournment.
Present same as before.

EDWARD E. GORE, called on behalf of complainant, being first duly sworn, deposes and says:

Direct interrogatories by Mr. IRWIN:

1. State your name and residence?
A. Edward E. Gore; Chicago, Ill.
2. How long have you resided in Chicago?
Ans. 5 years.
3. What is your business?
A. I am at present the president of the Audit Company of Chicago, a corporation engaged in a public accounting business. My business is that of a public accountant.
4. How long have you been engaged in that business?
A. In Chicago for five years; prior to that time I was engaged in a very similar business for the auditor of this State; I had charge of the bank department and building and loan association department in the auditor's office of the State of Illinois, which required the exercise of a great deal of accounting and practically the same duties as meet a public accountant at this time.
5. Please explain what your duties, or business as a public accountant consist of?
A. The duties of a public accountant consist of the investigation of the books, accounts and papers of individuals, firms and corporations, for the purpose of ascertaining the condition of a business, the amount of profit enjoyed by a business, the value of its assets, the extent of its liabilities, the accuracy with which its books are kept or fidelity of its employés.

670 6. Have you had occasion to examine into manufacturing establishments as to the manner of the keeping of their accounts and as to the accuracy of such accounts as to the property and assets of the companies or individuals in the manufacturing business?
A. Yes sir, many times.
7. I will ask you if it is customary and ordinary and considered a good business policy for manufacturing concerns to keep an account known as depreciation?
A. It is customary to keep an account that is synonymous with what you call it, although it is frequently treated under different terms; it will be under the account of "Reserve for depreciation" or "Contingent fund" or some designation of that character.
8. Please explain how such fund is ordinarily kept and how it is used in a manufacturing business?

Objected to by defendant as immaterial, incompetent, and no tending to prove any issue in the case.

A. The profits of a business are ascertained at the time of th closing of its books, it may be monthly, quarterly, semi-annually o annually; when such profits are ascertained, a calculation is mad as to the probable depreciation of the plant, machinery, fixtures an various property of the concern, and a proportionate amount fro the profits of said company is taken from the profits and added t this account called "Reserve for depreciation," and profits thereafte divided, leaving this account to stand as a liability of the concern that is, a liability in this sense, it offsets an asset by that amoun calculated to be too much; it is not a liability in the sense it is some thing the concern has to pay, but is set off and held apart for the pur pose of reducing the value of the assets admittedly carried too high the purpose of that reserve so carried is when the occasion arises an the plant is so depreciated that its usefulness is ended, the concern ma
671 mark off from its assets, the plant, machinery, etc., and with out involving the solvency of the concern, by extinguishin at the same time this liability on the other side of the balance shee called reserve for depreciation; that reserve for depreciation is base upon the experience of each business; in some lines of business de preciation is very rapid; in machinery that is used for cutting tha has great wear and tear, depreciation is extremely rapid, sometime running as high as 25 per cent. per year; in other lines of busines it varies according as the wear and tear varies, but a proper basi upon which depreciation is calculated, is the experience of that par ticular business and the length of time which must elapse before complete renewal of the plant is necessary; in that connection re pairs are not necessarily to be paid out of such reserve; there is distinction between repairs and renewal; repairs are to put the prop erty into good working condition, but there is a wear and tear tha goes on throughout the whole property which repairs cannot remed and which must be cared for through the medium of this reserve the life time of a property, under the best of conditions and eve when kept thoroughly repaired, is limited; there is a general givin out at the end of each period which no repair will make good which requires complete renewal and it is to provide for this com plete renewal that this reserve for depreciation is maintained.

9. What facts constitute limits on the life of machinery or appa ratus or buildings that causes this depreciation you have mentioned

Objected to by defendant same grounds as before.

A. First wear and tear. Second; atmospheric influences. The there is also the hazard of the machinery or apparatus becoming ob solete, being superceded by something much improved which mus be instituted to meet competition and the old machinery b
672 torn out; ordinary depreciation will result from wear an tear but these other things are contingencies constantly me with in the business.

10. About what is the ordinary depreciation taken into account for the buildings of a manufacturing plant?

Objected to by defendant as immaterial, incompetent, no proper foundation laid or qualification of the witness shown.

The MASTER: I think the inquiry should be limited to manufacturing plants for the manufacture of coal gas; I do not think you should go into depreciation generally.

11. Does this element of depreciation enter into all manufacturing plants and buildings?

Objected to by defendant same grounds.

The MASTER: That question is general in its character and the master holds he does not think it competent so far as it relates to all classes of manufacturing plants and buildings but the witness may answer subject to the objection.

A. It does.

12. Does it enter into or affect a gas manufacturing plant?

A. Undoubtedly.

13. Does a like depreciation affect a building constructed of brick and iron with a tile roof?

Objected to by defendant same grounds.

The MASTER: I think that competent; there are buildings of that kind in connection with the complainant's plant.

A. Such buildings depreciate undoubtedly.

14. Does this element of depreciation enter into gas plants, electric light plants, street railway plants and all public corporation plants of that character?

Objected to by defendant same grounds.

A. Yes sir.

673 15. Will you explain to about what extent and how they are affected?

Objected to by defendant same grounds.

A. In the case of an electric light plant, the wires and poles suffer from the atmosphere, from wear, and depreciate within 10 or 15 years, varying with different places. Machinery in a power house depreciates rapidly because run at a high speed. In the case of a street railway the depreciation is extremely rapid on account of wear and tear and there is a constant renewal going on of a street railway, both in its track, rolling stock and power house that has to be met and can be only properly met by a reserve for depreciation. In the case of a gas plant there is a depreciation going on through the action of the elements on the buildings and wear and tear of the machinery itself through the burning that goes on through the chemical action of the gas in the mains and the action of the water, the moisture in the ground where the mains are laid they rust out,

650 22. Had you no knowledge of the conditions or the size of the buildings erected upon the land owned by the Peoria Gas & Electric Co., could you, by an examination of that plat, tell what was the nature or character of the buildings erected thereon, or the nature or character of the apparatus contained therein?

A. I could tell all about it except in some instances; the height of the stories may not be shown on the plat; the nature of the apparatus is very clearly shown; the diameters and the sizes from a point of view immediately above it are shown accurately; the heights are in most cases marked; it shows a condenser 6 feet in diameter for instance and marked on it, 20 feet high, and from that I know exactly what it is; if they had failed to mark on it 20 feet high I would assume it was a proper height but I would not know whether it was or not, nor could I tell by looking at what is marked "Coal shed" whether that shed has 20 or 30 feet heating room under it but in the absence of other information I should assume they had made it high enough to get in a sufficient quantity of coal and I think all the buildings are marked on it as well as sizes.

23. Then in forming your estimate of the cost of the manufacturing plant of the Peoria Gas & Electric Co., you base your estimate to some extent upon conjecture that the buildings are erected and of the heights as you stated in your answer to the former interrogatory, did you?

A. That part which is under ground and concealed I took for granted the information on the plat was absolutely correct; that part which was above ground and could be seen I went by the buildings themselves and my own eyes rather than the plat.

24. Having examined the vouchers for the foundation of the gas holder of the Peoria Gas & Electric Company's plant, state what was the size of that foundation and of what it was made?

651 A. It was made of concrete: I am unable to state either its depth or diameter from memory and I had no information about it whatever except that contained in the voucher, because there is not a particle of it shows above ground. If Mr. Little had not told me about it, I would not have known whether that holder had a foundation under it or not, but the fact that it is standing there would indicate it.

25. How did you estimate the fair, market cost of it without knowing the depth or diameter of the foundation?

A. I took Mr. Little's word for the depth and diameter of the foundation and as for the rest of the holder I have recently built one a good deal like it; I did not go into the number of pounds of iron in it at all, I simply went on my own judgment, if my own holder cost so much how much would this one cost.

26. What was the size of the holder you built?

A. 250,000 cubic feet; then we built another one of 1,200,000 cubic feet.

27. In arriving at your estimate as to what was the fair, cash market value of the plant of the Peoria Gas & Electric Co., did

you base that estimate upon the manufacture of 50,000,000 cubic feet of gas per year, or upon what did you base it?

A. I was instructed to exclude any consideration of the future prospects of the company and I based it merely on the cost of building such a plant as that is having seen the plant with my own eyes.

28. Did you take into consideration the price gas was selling for in the city of Peoria at the present time?

A. I did not even know that and I paid no attention to it at all; I assumed that the company was getting or could get a fair price for its gas and based my estimate on the cost of building a good gas plant, such as they have.

652 29. Would you vary then your estimate of the fair cash market value of the plant of the Peoria Gas & Electric Company were it only to manufacture 50,000,000 cubic feet of gas per year?

Objected to by complainant as already answered and because the witness has stated that he answered the questions under instructions to exclude from his estimate the prospect of future sales of gas.

A. Well, if I knew there was any reason, either legal or physical, which would prevent the growth of the business beyond 50,000,000 cubic feet per year, I should say the company had built a much larger plant than necessary and it was not worth what it cost them.

30. What would you then say would be the fair, cash, market value of that plant upon the basis of the manufacture of 50,000,000 cubic feet of gas per year?

Objected to by complainant as incompetent, immaterial, not cross examination and assuming conditions not contained in the direct interrogatory with reference to this matter and also assuming further conditions not in the record.

The MASTER: I think the hypothesis is not in the record at all, that is, the basis for that estimate, but the witness may answer subject to the objection.

A. I am unable to answer the question with only that for data. The market value of a thing, leaving out of consideration entirely the cost of constructing it or duplicating it, is bound to depend on its earning capacity; and if I had only the maximum output fixed I must know the selling price before I can get any idea of the profit, and excluding the question of the cost of construction, the market value would depend entirely upon the question of profit.

653 31. Assuming that gas then was selling at $1.25 per thousand cubic feet with 10 cents off if paid before the 10th of the month in which the bill became due, what in your judgment would be the fair cash market value of the plant of the Peoria Gas & Electric Co. upon the basis of the manufacture of 50,000,000 feet of gas per year?

Objected to by complainant as incompetent, immaterial, not cross examination and involving assumptions not in the record.

A. Adding to the assumptions in your question, which I understand you want me to do, the further condition that the output for some reason will not grow beyond 50,000,000 cubic feet per year, I should say that plant would be worth about $325,000; that being the sum on which it would pay 7 per cent. interest.

32. Did you take into consideration in making your estimate of the fair, cash, market value of that plant an allowance of 5 per cent. for depreciation which you state should be allowed for depreciation in every gas plant?

Objected to by complainant as incompetent, immaterial, not cross examination and based on different assumptions from the direct interrogatori-s propounded to the witness and because further based on assumptions not in the record?

A. I did not take it in and I did not leave it out; if you want an answer to such a question as you ask me I would want a full half day to figure on it if anything depended on it; I have just given the best general idea I have. I assume that at that price the company could make about 45 cents per thousand on the gas sold which would give them about $22,500. per year profit. Of course in order to do that, they would have to change their organization from that of a progressive company intending to grow and become larger and employ the grade of men necessary for that sort of a company, to a company that had gotten its growth and every depart-
654 ment should be put in the hands of the cheapest men possible for no matter how good he was he could not make the business any better. That is to say, it would be managed under conditions that don't exist in the United States anywhere. All the gas companies I know of are run with the expectation of the business growing.

Defendant's counsel objects to the foregoing answer as not responsive and moves the court to exclude it.

(The COURT:)

33. Was that part of your answer to the question?

A. Yes sir, and it was in my mind at the time I made my estimate to Mr. Mansfield and what I based my estimate on and without that answer the estimate is not an intelligible one.

(Mr. MANSFIELD:)

34. Do you mean to say that you looked over each and every voucher which was paid that went to make up the cost of the manufacturing plant of the Peoria Gas & Electric Co.?

A. No, I *do* not; I looked over the accounts and saw the totals; I then looked over the various items entering into those accounts and looked over a large number of vouchers, enough to see the ac-

counts were made up by charging those vouchers to those accounts, and out of probably 100 vouchers I looked over they represented the cost of articles which I knew myself were just about what such articles would cost.

35. And you assumed those vouchers you did not look at were of the same character?

A. Yes sir, because they were all bound together in order of date and there was no selection used as to those shown me.

36. But as a matter of fact you don't know what the other vouchers contained at all, do you?

A. No sir, I do not.

37. Your estimate of the cost of that plant then is based merely upon sum totals, or practically upon sum totals of accounts shown you by the officers of the Peoria Gas & Electric Co.

655 A. Those sum totals, however, came—interrupted.

38. Answer my question yes or no.

A. No, I will not answer any question yes or no for you can put a question and have it answered yes or no and make a fool of a man in that way. The sum totals came very close to what my own experience has been in the construction of similar work and my own estimates of work which I have constructed. For instance, I recently made an estimate on constructing a bench of coal gas retorts for our own company and I could see that Mr. Little's vouchers came reasonably close to what I found I would have to pay for similar work.

39. What kind of materials did you base your estimate upon for the construction of similar work?

A. Common brick, fire brick, wrought iron and cast iron.

40. Is there any different grades of common brick, fire brick and wrought iron?

A. Theoretically yes; practically no. Practically you want the best you can get of all of them and the best don't cost much more than the worst.

41. Do you know the difference between the best brick manufactured and sold in the city of Peoria and the poorest brick manufactured and sold here?

A. I do not, but substitute Louisville, for Peoria and I will tell you all about brick that you want to know. As to fire brick, they are about the same all over the United States because they are nearly all shipped.

42. Do you know what kind of lumber was used in the construction of those buildings?

A. I might have noticed it but I did not; it looked to me, though, like sound, straight grown lumber, free from knots,

656 but I did not notice what kind of wood it was.

43. Did you make a close inspection of the lumber that entered into the construction of that plant?

A. I was an architect for close to 12 years and I cannot go close to lumber without seeing whether it is straight and sound, but I can

get close to it without noticing whether it is oak, hemlock or pine but I noticed this lumber to see it was free from defects.

44. You went down to examine that plant in order to give evidence in this case?

A. Yes sir, but I did not undertake to make a builder's estimate on it; I could have done it but it would have taken some time.

45. What is the composition of natural gas?

A. One atom of carbon to 4 atoms of hydrogen C. H. 4 as it is known, about 96 per cent., the balance nitrogen; sometimes there is a trace of sulphur and sometimes a little oxygen. Books will tell you there is some free hydrogen in it but there is not.

46. What is the composition of artificial coal gas?

A. It is free hydrogen, light carburetted hydrogen and a groupe of volatile oils known as illuminants—I mean such as liquidate at a low temperature and are gasses at an ordinary temperature.

47. What are those volatile oils which would represent the condensation which occurs in the pipes of a coal gas company?

A. They are of the same substance to which it owes its high illuminating power CH4. Marsh gas will not condense at any ordinary temperature, but all of the substances richer than that, which give gas its illuminating power, are liable to condense if the temperature becomes low enough.

657 48. What are some of those gasses which condense in the gas pipes of the Peoria Gas & Electric Co., if there is any condensation there?

Ans. Benzine, benzole—there are a dozen of them; I don't remember all their names.

49. Are there any ingredients in natural gas which would condense in the distribution of that gas?

A. Nothing except a very little vapor of water which occasionally gives trouble in exposed pipes at an exceeding low temperature; ordinarily natural gas gives no trouble at all from condensation; the interior of a natural gas main most always will give out dust if you tap the inside of it: you don't pump the mains of a natural gas system at all.

50. Do you ever pump the mains of an artificial gas system?

A. Yes, you are compelled to do it constantly; wherever you leave a trap you can be certain they will stop up; you can lay natural gas mains without traps.

51. What is the effect of the condensation of artificial gas upon the pipes, if any?

A. Do you mean as to rusting them or destroying them?

51. Yes?

A. It has very little effect because it is inside where the air cannot get to it: if the liquids which condense out of gas could be first thrown on a pipe, then the air get to it, it would rust the pipe very rapidly.

52. Does the condensation of these liquids in the pipe ever penetrate the pores of the pipe and tend to preserve the pipe?

A. I have heard people say it did, but I don't believe a word of it; I will answer your question, no. What does happen, however, is that leakage at the joints gets into the soil outside and greases the outside of the pipe and preserves it to some extent; it don't go through the cast iron though.

658 52. Do you know whether or not they have an appliance at the Peoria Gas & Electric Company for the pumping out of the pipes?

A. I feel morally certain they have, but I did not see it and I never heard anybody question it.

53. In making up your estimate of the cost of that plant, did you take into consideration that they did have that appliance?

A. Yes sir, I added $2.50 for a pump.

54. What kind of a pump is it?

A. A little hand pump that a man carries under his arm and when he goes to a drip he screws it on and pumps it out.

55. Are there certain locations in pipes where there are traps or drips for the purpose of accumulating whatever liquid may be contained in the pipes?

A. Yes sir.

56. Would the necessity of those drips be greater in a flat country, or practically a level country than in a hilly country?

A. They are equally necessary everywhere but it is somewhat easier to arrange them in a hilly town because you can yet longer grades draining to one point.

57. Is it practicable in the manufacture of coal gas to distribute the gas so that the candle power of the gas at the point of consumption will be 10 candle power?

A. It might be distributed so it would always be in excess of that; I would consider it just as impossible to so distribute it that it would be always 18 candle power as it was for Shylock to get his pound of flesh without getting a drop of blood.

58. Would the loss in the candle power of the gas in a city of the size of Peoria, basing it upon your knowledge of the length of the mains of the Peoria Gas & Electric Company, be appreciable between the plant of said company and the houses of the consumers?

A. Yes sir, it would be very appreciable.

659 59. To what extent?

A. It might be as much as 2 candle power, especially in cold weather; I am assuming in answering that question you start out with high candle power; if you start out with a low candle power there would be but very little loss; the higher the candle power the more the loss will be.

60. I understood you to say that the average life of a gas plant would be about 20 years and that there should be a charge for depreciation of 5 per cent. per year?

A. Yes sir.

61. And that you would place the amount of money representing

whose property they were laid, or were used for that purpose previous to September 1, 1900, the time of the commencement of this suit.

The MASTER: Suppose they were laid under the direction of the city of Peoria?

Mr. MANSFIELD: Or unless it is shown they were laid under the direction of the city council of the city of Peoria.

A. The total length of the 1¼ inch services laid is 111,369 feet, of which 3,301 feet are laid under pavement; 994 feet under
683 block stone pavement; 89 feet under cobblestone pavement; 1,060 feet under brick pavement on a 6 inch concrete base; 99 feet under a brick pavement with a macadam foundation; and 1,059 feet under brick pavement on a gravel foundation.

38. You may state the length of the two inch service pipes of the Peoria Gas & Electric Co. laid under your supervision and also how much is under pavement and what kind of pavement?

Objected to by defendant same grounds as before stated.

A. There are 37,244 feet total length of 2 inch services of which 2,637 feet is laid under pavement / 38 feet under block stone pavement; 61 feet under cobblestone; 1,891 feet under brick pavement on a 6 inch concrete base; 225 feet under brick pavement laid on macadam foundation and 422 feet under brick pavement laid on a gravel base.

39. State the total length of the 2½ inch service pipes including how much is under pavement and what kind or kinds of pavement.

Objected to by defendant same grounds.

A. The total length of the 2½ inch service pipe is 374 feet, of which 56 feet is under pavement; 7 feet under cobblestone pavement; 6 feet under brick pavement on a 6 inch concrete base, and 43 feet is under brick pavement on a macadam base.

40. State the total length of the 3 inch service pipes of the Peoria Gas & Electric Co. as laid under your supervision including how much is laid under pavement and what kind or kinds of pavement?

Objected to by defendant same grounds.

A. The total length of the 3 inch service pipe is 872 feet, of which 24 feet is under pavement; all of which pavement is a brick pavement laid on a 6 inch concrete base.

684 41. What is the total length of all the different sizes of service pipes as laid under your supervision that are laid under pavement?

A. The total length of service pipe under pavement is 6,090 feet.

42. What is the total length of all the service pipe laid under your supervision?

A. 179,252 feet.

43. You have stated that these different service pipes were laid

by you under your supervision as superintendent of distribution of the Peoria Gas & Electric Co.? I will ask you to state if the various lengths and conditions, with reference to which you have testified, describe the situation of the said service pipes on the first day of September, 1900.

A. Yes sir, all the information applies to the apparatus as it stood on that date.

44. State if any part of these service pipes were laid under or by direction of the city council?

Objected to by defendant as immaterial, incompetent and not the best evidence.

The MASTER: I think that is a pretty good objection but the witness may answer subject to the objection.

A. Part of these service pipes were laid on streets that were to be paved, that is, what is called service stubs; they were not real services.

45. Were any part of these services laid on application of consumers?

A. All the services were laid on application from the consumers.

Mr. MANSFIELD: I object to the last interrogatory for the
685 reasons heretofore stated.

46. With reference to the services of which you have testified so far as the same were laid into the premises of the consumer, you may state whether any were so laid without application from the consumer?

Objected to by defendant as immaterial, incompetent and not the best evidence, the application being the best evidence.

Mr. ABBOTT: I propose to show there were not any services laid into the premises of the consumer except upon an application.

A. No sir, we had an application for every service that was laid into the premises.

47. Referring to such services as were laid only from the main to the curb line, state whether any services were so laid except such as were laid under the direction of the city council?

Objected to by defendant same grounds last stated.

A. No.

48. Have you prepared, or caused to be prepared under your supervision, a map or plat showing the distribution and sizes of the different lengths of mains of the Peoria Gas & Electric Co. in the streets and alleys of Peoria as the same were on the first day of September, 1900?

A. Yes sir, I have.

49. Examine the plat now shown you, marked Exhibit "13" and state whether it is a plan or representation of the mains of the differ-

ent sizes belonging to the Peoria Gas & Electric Co. as the same ex
isted on the first day of September, 1900?

A. Yes sir, it is.

50. Is there any scheme or system in connection with this plat b
which the different sizes of pipe are represented?

A. Yes sir.

51. Explain what that is?

A. The sizes of pipe are explained by means of colors an
686 the broken or full lines; broken black line represents a 1
inch main; a full black line represents a 12 inch main;
broken red line represents a 10 inch main; a full red line repre
sents an 8 inch main; a full yellow line represents a 6 inch mai
and a full green line represents a 4 inch main. We have a smal
amount of 2 inch main which is represented by a double green lin

52. Is there anything on the plat showing the location of th
manufacturing plant itself?

A. No, the location of the plant is not shown except wher. the 1
inch main starts.

53. Please indicate by writing the word "plant" on the pla
where it is situated and was situated on the first day of September
1900, with reference to the other lines that are drawn upon th
plat.

A. I have so marked it.

54. Have you now indicated by writing the word plant upon thi
map, the situation of the manufacturing plant with reference to th
distributing system as the same is marked thereon?

A. Yes sir, I have.

55. State if the plat marked Exhibit "13" is a true and correct
plat of the streets and alleys of the city of Peoria and their relative
location so far as the same can be shown on a flat surface?

A. Yes sir.

56. And is it a true and correct representation of the streets an
alleys in which the main pipes of the different sizes were laid and
located on September 1, 1900?

A. Yes sir.

57. Were you in the city in the early part of November, 1901
when Mr. E. G. Cowdery and Mr. J. H. Eustis were here?

A. Yes sir.

687 58. You remember, do you, the occasion of their visit to
the city of Peoria?

Ans. Yes sir.

59. About when was it?

A. Between the 5th, and 8th, of November 1901.

60. State in your own way what you did, if anything, with rela
tion to showing Mr. Cowdery and Mr. Eustis the streets and alleys
in which the mains were laid, the character of the pavement and
what, if anything, you did in the way of showing, or explaining
the records of the company to them in relation to the amount of the
different kinds of mains or pipes?

Objected to by defendant as immaterial, incompetent and not tending to prove the issues in the case.

The MASTER: I do not think that material.

Mr. ABBOTT: If the master please, the estimates of these witnesses in their testimony was based to some extent on assumptions as to what the records of the company disclosed as to the amount and extent of the mains and services, on which they based their estimates of the cost of the plant, and the purpose is to show by this witness that they were shown everything that could be shown and that they were also permitted to inspect the records as to such things as were not on the surface and that the records shown them were true and correct.

Mr. MANSFIELD: Their testimony should have been given on facts that were within their own knowledge; what they knew from the explanation that was offered by this witness at the time he was taking them through the streets and alleys of the city of Peoria might have made no impression upon their minds at all and the mere fact this witness would testify to this at this time could not change the knowledge they had at that time.

Mr. ABBOTT: They have testified to what they knew, and we propose to show by this witness what he showed them and it is
688 certainly competent and material at this stage in our opinion.

The MASTER: I do not think you ought to include the records of the company; I do not think you ought to prove the records of the company by parole evidence.

Mr. ABBOTT: I am not, I merely expect this witness to say that he showed them the records; I do not ask him to state what the records disclosed.

The MASTER: The witness may answer subject to the objection.

A. I met Mr. Eustis and Mr. Cowdery at the company's office and showed them the records of the services, meters and mains and after they had examined them I drove them over the streets that were paved, under which we had mains laid, and also showed them the extent of the territory we covered with our distribution system and I explained to them the character of the pavement we had to remove and the size of the main under that pavement.

61. State if you showed them also the record of the size, character and length of the services.

A. Yes sir, I did.

62. State if you also showed them the record of the size and character of the meters and the number set up to September 1, 1900.

Objected to by defendant same grounds as last stated.

A. Yes sir.

63. Were the records which you showed them at that time true and correct?

A. Yes sir, they were.

64. Were they the same on which you have based your testi
today with reference to the size and length of the mains and se
and the size and character of the meters?

A. Yes sir.

66. Do you remember the occasion of the visit of
689 Pratt of Des Moines to the city of Peoria?

A. Yes sir, I do.

67. About when was that?

A. Between the 18th and 20th of November, 1901.

68. You may state what, if anything, you did with refere
showing Mr. Pratt over the streets and alleys of the city of
in which the mains and services of the Peoria Gas & Electr
had been laid and located prior to September 1, 1900, and w
anything, you did in the way of showing him the records
company as to the length of mains and services and the num
meters which had been set up prior to September 1, 1900?

Objected to by defendant as immaterial, incompetent an
tending to prove the issues in the case.

A. I met Mr. Pratt at the company's works and drove hin
the streets that were paved, under which we had mains lai
explained to him the work of laying the mains, the character
pavement we had removed and replaced, the size of the ma
laid and after driving him over the city I took him to the o
the company and showed him the records of the company's
services and meters.

69. Were the records which you showed Mr. Pratt of the
of mains, services and the number of meters of the Peoria
Electric Co. as the same had been laid, located and placed p
September 1, 1900, true and correct records?

Objected to by defendant same grounds as before.

A. Yes sir.

70. State if they were the same records from which you have
your testimony today in relation to that subject.

Objected to by defendant same grounds.

A. Yes sir.

690 71. Do you remember the occasion of the visit of Mr
merville of Indianapolis, Mr. Kellogg of Sioux City,
and Mr. Knapp of Chanute to the city of Peoria?

A. Yes, sir.

72. They were all here together were they not?

A. Yes sir.

73. Do you remember about when?

A. About the 10th or 12th of December, 1901.

74. State what, if anything, you did in the way of showi
Summerville, Mr. Kellogg and Mr. Knapp over the stree
alleys of the city in which the mains and services of the

Gas & Electric Co. were laid and located and had been laid and located prior to September 1, 1900, and what, if anything, you did with regard to showing them the records of the company with reference to the lengths and sizes of the mains and service pipes and the character and size of the meters belonging to complainant company on September 1, 1900?

Objected to by defendant same grounds as before.

A. I met Mr. Summerville, Mr. Kellogg and Mr. Knapp and took them over the streets and alleys which were paved, under which we had laid mains, and explained to them the character of the work necessary to lay the mains, also showed them the records of the company at the office with reference to the mains, services and meters.

75. Were those the same records which you had previously shown to Mr. Cowdery, Mr. Eustis and Mr. Pratt?

A. Yes sir, they were.

76. Were they true and correct?

Ans. Yes sir.

77. Were they the same records from which you have testified today as to the size, character and length of the different service mains and meters?

691 A. Yes sir.

78. I think I omitted to ask you in its proper order for the number and sizes of the meters of the Peoria Gas & Electric Co. as the same had been located and set prior to and as they existed on the first day of September, 1900. Please state the number of the meters of the different sizes and the total number as they existed on that date?

Objected to by defendant same grounds as before.

A. There were 1758 meters set on the 1st day of September, 1900. 413 of them were 3-light meters; 1217 were 5-light; 93 were 10-light; 12 were 20-light; 14 were 30-light; 6 were 45-light; 1 was 50-light; one was 100-light; and — was 150-light meters.

Complainant's counsel in connection with the testimony of this witness offers in evidence, and exhibits to the master, the plat marked "Exhibit 13" which has been identified and explained by the witness which said plat is hereto attached and made a part of the testimony of this witness.

Objected to by defendant as immaterial, incompetent and not tending to prove the issues in the case.

Cross interrogatories by Mr. MANSFIELD:

1. Did you lay any pipe, or superintend the laying of any pipe in the alley between Madison and Jefferson streets, and Fulton and Franklin streets in the city of Peoria?

A. Yes sir.

2. Did you have to shore up that block in there?

A. Just occasionally not continuously.

3. Who were some of the men employed on the job by the Peoria Gas & Electric Co. at that time?

A. I cannot recall the names of the laborers but Harry
692 Ross was a corker at that time.

4. Who were the men who did the excavating?

A. I cannot give you the names of the laborers: I do not recall them at all.

5. Don't you know any of the men who worked on that particular piece of work as laborers at that time?

A. I cannot recall any of their names now.

6. Can you obtain the information as to who worked on that particular piece of work.

Mr. ABBOTT: The complainant objects to this testimony as incompetent and immaterial: the questions immediately preceding the last question have been allowed to pass without objection for the reason we assumed they were perhaps proper questions to test the recollection and knowledge of the witness but as he states he has no recollection of the names the inquiry should certainly cease because it is not in any sense cross examination to ask the witness to produce any records of that work; it is not shown that he kept the time book or anything of that kind and, while the questions so far have not been objected to, yet they should not go any further on that line for the purpose of testing the recollection of the witness.

7. Then you don't know of anybody who did any work on the laying of the pipe between Madison and Jefferson streets and Fulton and Franklin streets in the city of Peoria?

A. No, I cannot recall any names at the present time.

8. About how much of the space between Franklin and Fulton streets in the location mentioned did you have to shore up?

A. That I could not give you either; it was just a shore occasionally where the banks showed signs of caving in.

9. Where did you have to shore up any of that space?

693 A. I cannot recollect that either.

10. Do you know as a matter of fact that you — to shore any of it up at all?

A. No, I am not absolutely certain on that, but as a general rule in all those alleys we had to shore occasionally but as to the shoring in that particular locality I am not absolutely certain.

11. Does this plat "Exhibit 13" show all of the pipes and connections of the same with the system of the Peoria Gas & Electric Co. on September, 1, 1900?

A. Yes sir, it shows all the main pipes.

12. Was there any other pipes running into the main, or connecting with the main, on South Adams street below Persimmon street in the city of Peoria previous to September 1, 1900?

A. By any other pipes, do you mean other than servicepipes?

13. Yes sir?

Ans. No.

14. There is a pavement on South Adams street in the city of Peoria between Persimmon street and Western avenue, is there not?

A. Yes sir.

15. How much of the trench you dug from Persimmon street to Western avenue did you have to shore up, and if you had to shore up any of it designate at what points the shoring was done?

A. Between Persimmon street and South street we had to shore occasionally; below South street we did not have to shore any.

16. Where did you have to shore between Persimmon and South street?

A. The stretch of main that lays along the curb below Lincoln avenue to South street had to be shored nearly every pipe in it.

17. Do you know who were the laborers employed upon that job?

694 A. No, I cannot recall any laborers at this date

18. When did you make this map Exhibit "13"?

A. About 3 or 4 weeks ago.

19. Is the alley between Persimmon street and Bridge street, and Washington street and Adams street in the city of Peoria paved?

A. Part of that is paved with cobble stones below Bridge street, I think, one or two blocks.

20. Did you have to shore up that when you dug the trench through there?

A. Yes sir, there were two or three places below Bridge street in the alley between Adams and Washington streets that we had to shore.

21. Who was employed on that job as laborers?

A. I could not give you the names of the laborers now; I don't remember them.

22. Did you have at that time throughout the city of Peoria several gangs of men working, or did you have but one gang at one place?

A. We had two gangs of men working; one gang was on Adams street below South and the other gang was in the alley between Adams and Washington streets above Persimmon street.

23. Did you have to shore up any in the alley between Adams and Washington street above Bridge street?

A. Yes sir, almost continuously up where the alley was paved and where we were close to the buildings.

24. Is that alley paved between Bridge street and Main street?

A. Yes sir.

25. Did you have to shore up any of the trench between Main street and Eaton street, and Washington street and Adams street?

695 A. Yes sir, nearly all of the block above Main street had to be shored and also occasionally above Hamilton street.

so that, the depreciation is constant in connection with a gas plant that will eventually render the plant worthless; the lifetime of a gas plant is about from 15 to 20 years in my experience, and it is the practice of accountants in constructing the balance sheets of such companies, as based upon actual experience with plants of that character, to reserve about 6 per cent. per annum on the value of the plant, or on the cost of the plant, for the purpose of creating a reserve for depreciation, which will amount to sufficient at the expiration of the average life time of such plant to replace it.

Cross interrogatories by Mr. MANSFIELD:

1. Have you ever been engaged in the manufacture of gas?

A. No sir.

2. Were you ever connected with any gas plant in the
674 United States?

A. Not in the sense that I have had any interest in them.

3. Have you ever been engaged in or about the office, or in or about the plant of a company that manufactures gas?

A. Well, I have looked through the books of gas companies and I have witnessed the tearing up of an old gas plant.

4. What would be the depreciation upon the pipes or mains of a gas company that was laid in sandy soil?

A. Well I would not be able to state as to that; my experience with gas mains was with some that were laid in black soil which *saw* taken out of the ground about 20 years after they were put in and they fell to pieces as they were taken out.

5. What would be the depreciation in a gas main laid in a clay soil, if you know?

A. I should think it would be about the same as that I mentioned I should think it would go to pieces in 20 years.

6. Do you know?

A. I saw this main taken out and I know how long it had been in.

7. What kind of soil was it in?

A. It was in central Illinois at Carlinville and was in black loam with a clay subsoil and the pipe had been in the ground some of them 20 years, some of them 18 years and some of them 22 years.

8. Do you know of your own personal knowledge when those gas pipes were put in the soil?

A. Well, yes, in a way; I know through the records when the plant was built and installed, but of course I was not on the ground and did not see the main planted.

9. You don't know whether they were old or new mains as a matter of fact when put in as you did not see them when
675 they were laid?

A. When they were put in they were undoubtedly new.

10. You didn't see them at that time?

A. No, but I know how the plant was built.

11. You don't know of your own knowledge whether those gas mains were put in the ground when they were new or old, do you?

A. Well, I was not standing there watching them.

12. You did not see the pipes when they were laid originally?

A. No sir.

13. In other words, all you have testified to here has been from hearsay knowledge obtained from the inspection of books without any practical knowledge of the life of a gas main?

A. Well, I would not say that.

14. What is the life of a gas main in sandy soil?

A. I don't know because I am not qualified to speak on that question.

16. What is the life of a gas holder?

A. I speak of both the mains and holder—interrupted.

17. Not from any hearsay but from your practical knowledge, if you have any, what is the life of a gas holder?

A. I speak from the point of an expert handling the accounts of such concerns and constructing their reserve.

18. You are then testifying to a knowledge that you have obtained from an inspection of the books of gas companies?

A. Not altogether; I do it from my knowledge of the accounting business gathered from the combined experience of such accountants as have preceded me in the business and have recorded their experience in the general accounting education I have acquired, and I know from the concensus of opinion of accountants in England and the United States that the average life of a gas plant is from 15 to 20 years.

676 19. Do you follow rules laid down by accountants or follow the orders given to you by the people for whom you are keeping books?

A. I do not take any orders from people I am working for.

(The MASTER:)

20. Do I understand you to say you are keeping books?

A. Not at all; I do not keep books; when I make an investigation of a gas plant, the entire plant, I see that it has a proper reserve for depreciation, both as a measure of prudence and for the protection of the owners of such plants and to protect any possible investor who may put his money in on the certificate I make.

(Mr. MANSFIELD:)

21. Does not the auditor of the State of Illinois keep the books of the Peoria Gas & Electric Co. in the city of Peoria?

A. I don't know what that company does.

22. You are president of the Audit Company of Illinois?

A. No sir, of the Audit Company of Chicago.

23. Where is its office?

A. 218 La Salle St., Chicago, Ill.

(The MASTER:)

24. I would like to know what you mean when you say the average life of a gas plant is from 15 to 20 years. Do you mean the entire plant including mains, etc., or merely the manufacturing plant?

A. The mains also.

(The SAME:)

25. Both the mains and manufacturing plant?

A. Yes sir, the mains and buildings that exist in the plant.

Adjourned by agreement until Thursday, January 9, 1902, at 1:30 p. m.

677 United States court room, Government building.

PEORIA, ILL., THURSDAY, *January* 9, 1902—1:30 p. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin, Mr. E. C. Ritcher and Mr. W. T. Abbott, appearing for complainant, Mr. Henry Mansfield appearing for defendant.

JOHN M. ROBB, called on behalf of complainant, being first duly sworn, testifies as follows:

Direct interrogatories by Mr. ABBOTT:

1. State your name, occupation and residence.

A. John M. Robb; superintendent Peoria Gas & Electric Co. Peoria, Ill.

2. How long have you occupied your present position?

A. For nearly three years, ever since the company began operations here.

3. State to what extent you are familiar with the lengths of the different sizes of mains and the streets and alleys in which they are laid?

A. I superintended the entire work of the installation of the distribution system.

4. Did you have the supervision of the work of laying the main pipes of the Peoria Gas & Electric Co. and also the laying of the service pipes and setting of meters as well?

A. Yes sir, I did and all other work of laying and distribution work of the gas department.

5. Are you familiar with the extent, size and different kinds of mains and services and the streets and alleys in which the same are laid in the city of Peoria?

A. I am.

678 6. The work, if I understand it, was all done under your personal immediate supervision?

A. Yes sir.

7. Are you able to give the lengths of the different sizes of mains which were laid under your supervision as constituting part of the distributing plant of the Peoria Gas & Electric Co.?

A. Yes sir, with the aid of my data I can give the lengths of the mains but my memory is not very good for figures.

8. Was the data or memoranda of which you have testified prepared by yourself or under your immediate supervision?

A. Most of it I prepared myself and the rest was prepared under my charge and direction.

9. State the number of feet of 16 inch main pipe which were laid under your supervision and state how much of that is under pavement?

A. 1758 feet of which 160 feet is under pavement.

10. Under what kind of pavement is that laid?

A. 80 feet of it is under block stone pavement and 80 feet is under brick pavement—large brick laid on macadam foundation.

11. State the number of feet of 12 inch main laid under your supervision and how much of that is under pavement and what kind of pavement?

A. 20,768 feet of 12 inch main of which 11,225 feet is under pavement; 3,128 feet of that is under block stone pavement; 4,973 feet is under brick pavement laid on 6 inches of concrete; 1,364 feet is laid under brick on a macadam foundation; 888 feet is laid under a brick pavement on a gravel foundation; 872 feet is laid under a cobblestone pavement.

12. State the number of feet of 10 inch mains laid under your supervision and how much of that is under pavement and what kind or kinds of pavement?

679 A. There are 3,482 feet of 10 inch main of which 58 feet is under pavement; it is a brick pavement laid on 6 inches of concrete.

13. State what length of 8 inch main has been laid under your supervision, how much of it is under pavement and what kind of pavement?

A. There are 20,224 feet of 8 inch main of which 13,234 feet are under pavement; 160 feet of that pavement is asphalt on 6 inches of concrete; 589 feet is laid under a block stone pavement; 5,197 feet is laid under a brick pavement on a 6 inch concrete base; 7,288 feet is laid under a brick pavement on a 6 inch gravel base.

14. State the length of the 6 inch mains of the Peoria Gas & Electric Co. laid under your supervision and state how much of that is under pavement and what kind or kinds of pavement?

A. There are 12,874 feet of 6 inch main laid, of which 5,474 feet is under pavement; 93 feet is under a block stone pavement; 3,828 feet is under a brick pavement on a 6 inch concrete base; 517 feet is under a brick pavement on a 6 inch gravel base; 506 feet is

under a brick pavement laid two courses of brick thick on a 6 inch concrete base, and 530 feet is laid under cobble stone.

15. State the length of the 4 inch main of the Peoria Gas & Electric Co., laid under your supervision and how much of it is under pavement and what kind or kinds of pavement?

A. There are 80,852 feet of 4 inch main laid, of which 9,792 feet is under pavement; of this there are 326 feet laid under asphalt pavement on a 6 inch concrete base; 309 feet under block stone pavement; 5,772 feet under a brick pavement laid on a 6 inch concrete base; 152 feet laid under a brick pavement on a macadam base; 2,256 feet laid under a brick pavement on a 6 inch gravel base; 977 feet laid under a cobblestone pavement.

680 16. What is the total length of the mains laid under an asphalt pavement with a 6 inch concrete foundation?

A. 486 feet of mains.

17. What is the total length of mains laid under a block stone pavement?

A. 4,199 feet.

18. What is the total length of mains laid under brick pavement on a 6 inch concrete base?

A. 19,828 feet.

19. What is the total length of mains laid under brick on macadam foundation?

A. 1,596 feet.

20. What is the total length of mains laid under brick on a 6 inch gravel foundation?

A. 10,949 feet.

21. What is the total length laid under two courses of brick on a 6 inch concrete foundation?

A. 506 feet.

22. What is the total length of main laid under cobblestone pavement?

A. 2,379 feet.

23. What is the total length of mains laid under pavement of all descriptions?

A. 39,943 feet.

24. What is the total length of the mains all together including those laid under pavement?

A. 140,223 feet.

26. State if the lengths of the different sized mains, the character of the pavements you have mentioned, the total length of pipe laid under pavement and the total length of pipe all together are as the same stood on the first day of September, 1900?

681 A. They are just as they stood on September 1st, 1900.

27. Did you in the course of the laying of these pipes become familiar with the character of the soil of the city of Peoria?

A. Yes sir, I did so far as the mains were concerned.

28. What is the character of the soil in the city of Peoria through which these main pipes were laid?

A. Mostly sand in the district below the bluff, in some places the ground is filled in, and on the bluff the soil is generally yellow clay.

29. To what width as a rule was it necessary to excavate the trench to lay the pipes?

A. 3½ feet was the average width of our trench.

30. What width of pavement was disturbed? on the average, which had afterward to be replaced?

A. I should judge the average was between 3½ and 4 feet. Whenever a ditch caved a little bit under the pavement the city inspector required us to remove the pavement the entire width of the caving so in some cases the amount of pavement removed was greater than the width of the original trench.

31. Was that an unusual or frequent occurrence?

A. Below the bluff, where the greater part of the pavement was, it was a frequent occurrence.

32. To what extent in the digging of trenches for the laying of pipes in that part of the city below the bluff, did it become necessary to shore the sides of the trenches?

A. The greater part of the trenches that were excavated through the pavement had to be shored more or less and nearly all of 12 inches had to be almost continuously shored.

33. To what depth on the average were these trenches dug?

A. On the average of 4 feet in depth.

34. Are you able to give the lengths of the different sizes
682 of service pipes together with the character of the pavement under which they were laid, if any were laid under pavement?

A. Yes sir, I can give you the lengths of the various sizes of service pipe.

35. Those were also laid under your supervision?

A. Yes sir.

36. State the total length of the one inch service pipe of the Peoria Gas & Electric Co. as laid under your supervision including in your statement how much is under pavement and what character of pavement?

A. The total length of the one inch service pipe laid is 29,399 feet of which there are 72 feet under pavement; 14 feet is under block stone pavement; 14 feet under cobblestone; 7 feet under a brick pavement laid on a 6 inch concrete base and 37 feet under a brick pavement laid on a gravel base.

37. State the total length of the 1¼ inch service pipes together with how much is under pavement and the character of the pavement?

Mr. MANSFIELD: The defendant objects to this testimony as incompetent and immaterial unless it is shown that at the time these service pipes were laid, or immediately after they were laid they were used for the purpose of distributing gas to the customer into

26. In the alley between Hancock street and Spring street, between Adams street and Jefferson street paved?

A. No.

27. Did you have to shore up the trench along there?

A. Just occasionally where it showed signs of coming in.

28. At what point along that line of trench did you have to shore up?

A. I could not recollect any particular point there?

The MASTER: How do you claim, Mr. Mansfield, that this testimony becomes competent at this stage of the proceedings with reference to what had to be shored up or what had not?

Mr. MANSFIELD: The complainant is bringing it in here as an expense.

The MASTER: How would it be competent unless it were made to appear by this witness, or somebody else, that this witness when showing these men where the mains and services were laid gave them these facts to take into consideration as an item of expense and that they made their estimates based upon his representations. How does it become competent unless that appears?

Mr. MANSFIELD: Don't it appear?

The MASTER: I do not know where it appears—I merely want to get your theory of it.

Mr. MANSFIELD: As a matter of fact the expenses this complainant has gone to does not prove the issues in this case at all; the question is not how much the company has expended in the erection of its plant in the city of Peoria; the question is, What can gas be made for in the city of Peoria at a reasonable price?

The MASTER: That is one very material question.

Mr. ABBOTT: If Mr. Mansfield wishes to file a demurrer
696 to the evidence so far introduced we are willing to argue it.

Mr. MANSFIELD: They might go and put in service pipes into every house in Peoria; they might increase their investment here to millions of dollars, but you could not base the reasonable price of gas upon anything like that.

The MASTER: That is true; but that is not the question that this testimony tends in any way to prove. I simply want to get your idea of it.

Mr. MANSFIELD: I am simply going on their idea now, not on my idea at all.

The MASTER: My idea is it is wholly incompetent, but you can pursue it if you see fit; I do not see the application of this proof now, considering what is in evidence so far. If, as a matter of fact, this witness had made representations of that character to these expert witnesses who have estimated the cost of the plant and it appeared he had done so, then I could see how it would become material.

Mr. RITCHER: Nearly all the expert witnesses testified from their own experience with soil and not from any information given them as to the soil in the city of Peoria.

The MASTER: That is true, and it does not appear anywhere in the evidence that any representations were made to them except as to the general lines of the distributing mains and services.

29. Is the alley north of Hamilton street, between Monroe and Madison streets, paved?

Ans. No.

30. Did you have to shore up the trench in that alley?

A. I cannot recall any particular place where we had to shore there.

31. Is the alley north of Hamilton street, between Perry St., and Monroe St., paved?

Ans. No.

32. Did you have to shore up the trench in that alley?

A. No, I cannot recall any place along there we shored up.

697 33. Is the alley north of Main street, between Glendale Ave. and Perry street, paved?

A. Only where it crosses Hamilton street.

34. Did you have to shore up the trench in that alley?

A. No, I don't think we did.

35. Is the alley between Franklin street and Spencer street, between First and Second avenues, paved?

Ans. No sir;

36. Did you have to shore up the trench in that alley?

A. Yes sir; there was shoring in that alley, but I could not recall the particular places.

37. Where was it—in what block?

A. I could not give that either; you see in doing this work we had the sheathing and where we did not need it we left it in one particular place, but when we worked in those alleys we had to carry the sheathing with us and if the trench showed signs of coming in we shored it.

38. But don't you recollect of any particular place that was done?

Ans. No sir;

39. Nor you don't know how much of it you did?

Ans. No.

40. Is the alley between Second avenue and Third avenue and Franklin street and Spencer street, paved?

Ans. No sir;

41. Did you have to do any shoring in that alley?

A. Yes, we had to do some there.

42. Where was the particular location in that alley you had to shore?

Ans. I don't recall the particular location.

43. Do you know the names of any of the men who were on that job?

Ans. No, I don't recall the names of any of the laborers.

44. Who were the men that did the corking on that job?

A. Well, we had several; Harry Ross was one; John Newcomb was another; Frank Staffan was another; Arthur Victor was another; there were several more; I don't recall all their names now.

698 45. On Franklin street, between Adams and Perry streets, did you have to shore up the trench along that street?

A. Yes, occasionally in the first two blocks on Franklin St., from Adams street, and the last two blocks ending at Main street—almost continuously so.

46. Did you have to shore up the trench on Main street, between the alley in the block between Adams and Washington streets and Bluff street in the city of Peoria?

Ans. Yes sir;

47. Where?

A. On Main street between and from the alley below Adams street and Washington street and to Knoxville—not continuously, but at every joint length as it became necessary.

48. Did you have to shore up the trench on Knoxville avenue?

A. There was some shoring done there, but I don't recall at what particular points

49. How frequently did you have to shore it?

A. I could not answer definitely as to that either; I think the first two blocks we had to shore every joint length.

50. On Main street, between Bourland street and Bluff street, did you have to shore the trench there?

Ans. No sir;

51. On Spencer street, between Read avenue and High street, did you have to shore there?

A. Occasionally below Seventh avenue we had to shore.

52. How frequently?

A. Every two or three pipe lengths as the sides of the trench would show signs of coming in.

53. On what street was the double course of brick laid on a concrete foundation?

A. On Hamilton street and in the alley between Washington and Water streets from Main to Hamilton streets.

54. Is there a concrete foundation on Hamilton street?

A. Yes sir;

699 55. Where?

A. Right where our main crosses the street, right at the National hotel, just above Jefferson St., is the place I recall particularly.

56. Is that two courses of brick laid on concrete?

A. Two courses of brick laid on concrete.

57. Is that the only pavement in the city of Peoria of that kind and character?

Ans. That is the only kind we took up.

58. Where did that pavement extend from and to?

A. That pavement we disturbed?

59. Yes?

Ans. It was across Hamilton St., were we cross it twice—at the alley between Jefferson and Madison avenues and at the alley between Madison avenue and Monroe street.

60. How wide is that street?

Ans. 100 feet.

61. Didn't you testify on direct examination that there were 516 feet of your mains under that kind of pavement?

A. There is one more block of that—in the alley between Washington and Water street, from Main street to Hamilton street.

62. You testified that the services were laid into the property of consumers upon application—upon application for what?

A. For gas service.

63. Did those applications contain any request to have a meter placed in the premises?

Objected to by complainant as incompetent, immaterial and not cross examination, also not the best evidence.

(Question withdrawn.)

64. When you drove Mr. Eustis over the streets in the city of Peoria, how long did it take you to show him the streets and alleys under which the pipes were laid?

A. As nearly as I can recollect, about an hour.

700 FRANCIS W. LITTLE, recalled for further cross examination.

Interrogatories by Mr. MANSFIELD:

1. Have you the information called for in cross interrogatory No. 93?

A. Yes sir.

2. Will you produce that information and make it part of your sworn answer to that interrogatory?

A. The number of services attached to the main running down Adams street from Persimmon street to the city limits, on May 1, 1900, was 160 of which 93 were services into the houses of consumers and 67 were services running merely from the main up to and immedately back of the curb.

3. Have you the information called for in cross interrogatories 95 and 96?

A. Those questions were asked and objected to and no ruling was made on it and I have not that statement made up. The fact is, I overlooked the date of May 1 and supposed it was the same information that the question calls for giving the date of September first.

4. What was the average price of the services so laid on South Adams street in the city of Peoria?

A. The average price or cost?

5. The average cost.

A. That I could not tell without an examination of the books of the company to ascertain the exact number of feet of each and the expense of putting them in.

6. What was the average length of those services on South Adams street in the city of Peoria?

A. That information I have not got.

7. Did you not testify on direct examination as to the
701 average length of the service pipes put in by the Peoria Gas & Electric Co.?

A. Yes sir, I think I testified as to the average length of all services.

8. What was the average length of all the services?

A. In the vicinity of 80 feet; the exact amount I have forgotten now.

9. What did you testify as to the total length of the services put in—what number of feet?

A. The total length of services was 179,252 feet up to September, 1900; the average length of the services were 73 9/10 feet.

10. What was the average cost per foot of laying those services?

A. 25 5/10 cents.

11. How many services were there?

Ans. 2426.

12. What was the average cost per service laid?

A. $15.89.

13. Did you testify before the board of review of Peoria county, Ill., on the 29th day of August, 1901?

A. I testified on or about that time; I have forgotten the exact date.

14. Did you not testify there as follows, in answer to this question: "How many services have you," and you answered, "In the vicinity of 2000," and in answer to the question, "What did those service pipes cost each," you answered, "We have 250 tons of service pipe; some of them were put in before the rise in price of pipe and some afterwards, and the average was made out in that way on the basis of the value of the pipes;" then in answer to the question, "Can you arrive at any estimate of what each service pipe cost," did you not testify, "We estimate it by the tonnage of the pipe and add the labor of laying it;" then in answer to the question,
702 "State about how much that cost—each service pipe," did you not testify, "It cost about 3 cents a foot, I think; the services cost on the average about $3.00 apiece; it was either $3.34 or $2.84." Did you not testify in words as shown by the answers to the foregoing questions?

Mr. IRWIN: We object to the question as calling for conditions that did not exist on or about September 1, 1900, or during any period concerning which the witness has been asked about. We object to the question as incompetent, immaterial and not cross examination.

The MASTER: The witness is asked with reference to the cost of the service pipe generally that they had at the time he testified before the board of review. It has not been shown yet that the witness was sworn there.

Mr. IRWIN: Nor does it appear he was interrogated about these service pipes or this particular matter.

The MASTER: You had better start right, Mr. Mansfield, and read up to that question.

15. Did you not testify under oath before the board of review?

A. No, sir, I have no recollection of being sworn at that hearing. In fact, my recollection is very clear that I was not under oath.

16. Did you not then testify to the questions asked you in the preceding interrogatory No. 14, as stated in the answers thereto, as read by me to the reporter?

Objected to by complainant as incompetent, immaterial and because the witness has just stated he was not under oath at the time and therefore was not testifying.

The MASTER: It is competent to show contrary statements
703 of the witness. Are you introducing it for that purpose, Mr. Mansfield or for the purpose of impeachment?

Mr. MANSFIELD: I am introducing it for the purpose of impeachment.

Mr. IRWIN: Where it does not appear that the witness is under oath, he was not testifying and we object to the use of the word "testify" in the question.

Mr. MANSFIELD: I expect to prove the witness was under oath at the time.

The MASTER: I think it fair to the witness and also the inexorable rule that a question of this kind should be plainly put with the time, place and circumstances fixed and if you will put your question separately, that is divide it up, the witness may answer subject to the objection.

17. Did you not, after being first duly sworn, testify before the board of review of Peoria county, on August 29, 1901, in the court house in the city of Peoria, in answer to the question, "How many services have you," did you not answer, "In the vicinity of 2,000"?

Objected to by complainant same grounds as before.

The MASTER: The witness may answer subject to the objection.

A. I have no recollection of having been sworn at the time or place stated in the question and I have no recollection as to the number of services I stated we had at that time.

18. Did you appear before the board at that time?

A. On or about that time, I did.

19. Did you make any statement with regard to the number of services you had?

A. I recollect making some statement concerning the number of services we had at that time.

704 (The MASTER:)

20. When you refer to that time, do you refer to the time you were before the board of review?

A. Yes sir.

(Mr. MANSFIELD:)

21. Did you not testify before the board of review of Peoria county, Ill., after having been first duly sworn, on the 29th day of August, 1901, in the court house, in the city of Peoria, in answer to the question, "What did those service pipes cost each," did you not testify, "We have 250 tons of service pipe; some of them were put in before the rise in the price of pipe and some afterwards and the estimate was made out in that way on the basis of the value of the pipes."

Objected to by complainant as incompetent, immaterial, not cross-examination and assuming that the witness was sworn on that occasion.

The MASTER: The same ruling.

A. I have no recollection of having been sworn at the time of my appearing before the board of review and I think I stated—my recollection is quite clear that I stated—when appearing before the board that the estimates of the values of the property, and as put upon the property, were what I considered to be the value of the property at the time the statement was made up, disassociated from any license or right to use the public streets of the city, and was the value of the property as laid in the public streets for any purpose whatever and where it was situated at that time, disassociated from the franchise or license to use the public streets for such purpose. Concerning the service pipes, my recollection is now that my statement was confined to the value of the metal in the pipes at that time laying in the streets where it was.

22. Did you not testify in regard to the number of tons of service pipe that were laid in the streets of the city of Peoria by the Peoria Gas & Electric Company?

705 A. I do not recollect.

23. If not under oath, did you not state, "We have 250 tons of service pipe; some of them were put in before the rise in the price of pipe, some afterwards and the estimate was made out in that way on the basis of the value of the pipes," before the board of review, at the time and place above designated in the former interrogatory?

A. In my statement before the board of review, I stated from memory only my recollection of the size of the plant and various parts of the plant owned by the Peoria Gas & Electric Co. that year, and I could not undertake to give my words, or anything more than the general substance of my words, as stated at that time, or used in the statement made. I have no recollection as

to whether or not I stated that there were 250 tons in the service pipes then laid in the public streets.

24. Did you not testify before the board of review of Peoria county at the same time and place, in answer to the question, "Can you arrive at an estimate of what each service pipe cost," did you not testify, "We estimate it by the tonnage of the pipe and add the labor of laying it"?

Objected to by complainant as immaterial, incompetent, not cross examination and assuming the witness was sworn and testified.

The MASTER: The witness may answer subject to the objection.

A. I have no recollection now concerning the asking of the question referred to, or my answer to it, if such a question was asked, and, as stated above, I have no recollection that I was under oath.

25. If not under oath, did you not make that statement before the board of review at that time and place?

706 Objected to by complainant as immaterial, incompetent and not cross examination.

The MASTER: Same ruling.

A. I have no recollection concerning such a statement.

26. Did you not before the board of review of Peoria county at the same time and place testify in answer to the question, "State about how much that cost, each service pipe," did you not testify it would cost about 3 cents a foot; I think the services cost on the average about $3. apiece; it was either $3.34 or $2.84"?

Objected to by complainant as not cross examination, incompetent, immaterial, and assuming that the witness was sworn.

The MASTER: The witness may answer subject to the objection.

A. As stated above, I have no recollection of having been sworn when appearing before the board of review and I am quite clear in my recollection that I did not at any time state the cost of the services, or use the word "cost;" if I made any statement concerning the cost, it was based on the then value of the services as estimated by me.

27. If you were not sworn at the time and place mentioned before the board of review, did you not state in answer to the question, "State how much that cost, each service pipe," that it cost about 3 cents; I think the services cost on the average about $3.00 apiece; it was either $3.34 or $2.84"?

Objected to by complainant as immaterial, incompetent and not cross examination.

The MASTER: Same ruling.

A. My recollection is that any statement which was made by me

concerning the services of the Peoria Gas & Electric Co. was based upon their then value and not upon their cost.

28. Did you not testify before the board of review, at the same time and place in answer to the question, "You put in most
707 of the services at the same time you put in the mains"? Did you not testify and answer "Yes"?

Objected to as not cross-examination, incompetent, immaterial and assuming the witness was sworn and gave testimony at that time.

The MASTER: The witness may answer subject to the objection.

A. I have no recollection that I was sworn when appearing before the board of review and have no recollection of giving such testimony.

29. You testify that in your statement, or testimony, before the board of review, that such testimony, so given, was given upon the idea of the value of the pipe in the ground disassociated from the franchise and license of the company to do business, or to furnish gas in the city of Peoria. As vice president of the Peoria Gas & Electric Company, did you not make a statement, or send a statement to the board of equalization of the State of Illinois with regard to the value of the franchise of the Peoria Gas & Electric Company in the city of Peoria?

Objected to by complainant as not cross-examination, incompetent and immaterial.

A. I signed the usual report to the State board of equalization but have no recollection now as to whether it contained any statement concerning the franchise of the company; I don't know whether it had any statement in it whatever concerning the franchise or its value.

30. In the statement so sent by you to the board of equalization of the State of Illinois, did you place any value on the shares of stock of the Peoria Gas & Electric Company?

Objected to as not cross-examination, immaterial and incompetent.

The MASTER: I think it incompetent and immaterial, but the witness may answer subject to the objection.

708 A. I don't recollect the contents of the statement now.

31. Have you now the information asked for heretofore in your cross-examination as contained in cross-interrogatories # 230 to # 261 inclusive on pages 223 to 231 inclusive of this record?

A. I have made up the answers to the cross-interrogatories referred to in the form of tabulated statements which I have with me and now produce as my answers to such interrogatories, making the same a part of my answer to this interrogatory.

709 *Operating Statement, Month of May,* 1900.

Gas sold as per consumers' meters			3,295,800 c. f.
Total expenditures as per statement below			$5704.41
Less value of residuals made:			
488,360 lbs. coke	at $3.25 per ton	783.59	
- - - " breeze	at " "	- - -	
- - - " retort carbon	at " cwt	- - -	
- - - gal. tar	at " gal	- - -	
- - - lbs. ammonia	at " lb	- - -	
			783.59
Expenditures after deducting value of residuals			$4920.82
Add depreciation at 6½% per an. on cost of property			2294.61
Add interest at 10% per annum on cost of property			3618.77
Total cost			$10834.20
Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) and including interest at 10% per annum on cost of property			3.287+
Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) but not including interest			2.189+
Cost of gas per thousand cubic feet, excluding value of resids			1.730+
Cost of gas per thousand cubic feet, after deducting value of residuals made, not including depreciation or interest			1.493+

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	741.67		741.67
2	Accounting department	368.35		368.35
3	General office sundries		340.34	340.34
4	Canvassing	561.90		561.90
5	Insurance			
6	Rentals		56.76	56.76
7	Interest			
8	Taxes		207.22	207.22
9	Legal exp., loss & damage		5.00	5.00
10	Stationery, ptg. & postage		59.66	59.66
11	Stable expenses	286.78		286.78
	Manufacturing:			
13	Generator fuel			
14	Gas coal	92.14	948.99	1041.13
15	Boiler fuel	9.00		9.00
16	Bench fuel		356.11	356.11
17	Manufacturing labor	688.20		688.20
18	Manufacturing supplies		30.03	30.03
19	Oil			
20	Enrichers		162.14	162.14
21	Purification labor	77.50		77.50
22	Purification supplies			
	Distribution:			
23	Distribution labor	295.69		295.69
24	Distribution supplies		231.45	231.45
	Miscellaneous:			
26	Mscl. supplies & expenses		96.	96.71
	Repairs & renewals:			
27	Repairs & renewals meters			
28	Repairs & renewals services			
29	Bench repairs			
30	Gas house & mach'y repairs			
31	Repairs & renewals mains	64.73	24.04	88.77
		3185.96	2518.45	5704.41

710 *Operating Statement, Month of June*, 1900.

Gas sold as per consumers' meters ..... 4,030,900 c. f.

Total expenditures as per statement below $7394.51

Less value of residuals made:

719,274 lbs.	coke	at $3.25	per ton	1168.82	
— — — "	breeze	at	" "	— — —	
— — — "	retort carbon		" cwt	— — —	
— — — gal.	tar	at	" gal	— — —	
— — — lbs.	ammonia	at	" lb	— — —	
					1168.82

Expenditures after deducting value of residuals $6225.69

Add depreciation at 6½% per an. on cost of property 2294.61

Add interest at 10% per annum on cost of property 3618.77

Total cost $12139.07

Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) and including interest at 10% per annum on cost of property	3.011+
Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) but not including interest	2.113+
Cost of gas per thousand cubic feet, excluding value of resids	1.834+
Cost of gas per thousand cubic feet, after deducting value of residuals made, not including depreciation or interest	1.544+

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	575.00		575.00
2	Accounting department	382.00		382.00
3	General office sundries		257.32	257.32
4	Canvassing	480.75		480.75
5	Insurance		70.00	70.00
6	Rentals		1.42	1.42
7	Interest			
8	Taxes		207.22	207.22
9	Legal exp., loss & damage		406.50	406.50
10	Stationery, ptg. & postage		231.19	231.19
11	Stable expenses	335.20		335.20
	Manufacturing:			
13	Generator fuel			
14	Gas coal	1024.85	1418.75	2443.60
15	Boiler fuel			
16	Bench fuel		315.32	315.32
17	Manufacturing labor	810.60		810.60
18	Manufacturing supplies			
19	Oil			
20	Enrichers		237.35	237.35
21	Purification labor	48.00		48.00
22	Purification supplies		25.38	25.38
	Distribution:			
23	Distribution labor	255.07		255.07
24	Distribution supplies		62.82	62.82
	Miscellaneous:			
26	Mscl. supplies & expenses		87.24	87.24
	Repairs & renewals:			
27	Repairs & renewals meters			
28	Repairs & renewals services	22.50		22.50
29	Bench repairs			
30	Gas house & mach'y repairs		13.17	13.17
31	Repairs & renewals mains	113.54	13.32	126.86
		4047.51	3347.00	7394.51

711 *Operating Statement, Month of July,* 1900.

Gas sold as per consumers' meters					4,294,700 c. f.
Total expenditures as per statement below					$7360.32
Less value of residuals made:					
652,024 lbs. coke	at $3.25	per	ton	1059.60	
- - - " breeze	at	"	"	- - -	
- - - " retort carbon	at	"	cwt	- - -	
23,654 gal. tar	at .05	"	gal.	1182.70	
- - - lbs. ammonia	at	"	lb.	- - -	
					2242.30
Expenditures after deducting value of residuals					$5118.02
Add depreciation at 6½% per an. on cost of property					2294.61
Add interest at 10% per annum on cost of property					3618.77
Total cost					$11031.40

Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) and including interest at 10% per annum on cost of property	2.568 +
Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) but not including interest	1.726 —
Cost of gas per thousand cubic feet, excluding value of resids	1.713 +
Cost of gas per thousand cubic feet, after deducting value of residuals made, not including depreciation or interest	1.191 +

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	312.50		312.50
2	Accounting department	325.10		325.10
3	General office sundries		106.52	106.52
4	Canvassing	292.68		292.68
5	Insurance		2585.25	2585.25
6	Rentals		49.51	49.51
7	Interest			
8	Taxes		207.22	207.22
9	Legal exp., loss & damages		20.00	20.00
10	Stationery, ptg. & postage		77.74	77.74
11	Stable expenses	182.07		182.07
	Manufacturing:			
13	Generator fuel			
14	Gas coal		1275.71	1275.71
15	Boiler fuel		57.63	57.63
16	Bench fuel		331.03	331.03
17	Manufacturing labor	831.45		831.45
18	Manufacturing supplies		34.70	34.70
19	Oil			
20	Enrichers		120.79	120.79
21	Purification labor	61.50		61.50
22	Purification supplies			
	Distribution:			
23	Distribution labor	139.37		139.37
24	Distribution supplies	58.89	105.65	164.54
	Miscellaneous:			
26	Mscl. supplies & expenses		96.29	96.29
	Repairs & renewals:			
27	Repairs & renewals meters			
28	Repairs & renewals services	18.90	.91	19.81
29	Bench repairs		35.80	25.80
30	Repairs & renewals mains			
		2233.86	5126.46	7360.32

712 *Operating Statement, Month of August,* 1900.

Gas sold as per consumers' meters: Light 1,503,000
Fuel 2,350,800
3,853,800 c. f.

Total expenditures as per statement below $5954.22

Less value of residuals made:

547,211 lbs.	coke	at $3.25	per ton	889.22	
21,700 "	breeze	at 1.00 "	"	10.85	
- - - "	retort carbon	at	" cwt	- - -	
6,085 gal.	tar	at .05 "	gal	304.25	
- - - lbs.	ammonia	at	" lb	- - -	
					1204.32

Expenditures after deducting value of residuals $4749.90
Add depreciation at 6½ % per an. on cost of property 2294.61
Add interest at 10 % per annum on cost of property 3618.77

Total cost $10663.28

Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½ % per annum on cost of property (exclusive of real estate) and including interest at 10 % per annum on cost of property ..... 2.766 +

Cost of gas per thousand cubic feet after deducting value of residuals made and including depreciation at 6½ % per annum on cost of property (exclusive of real estate) but not including interest..... 1.827 +

Cost of gas per thousand cubic feet, excluding value of resids..... 1.547 +

Cost of gas per thousand cubic feet, after deducting value of residuals made, not including depreciation or interest..... 1.232 +

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	1112.50		1112.50
2	Accounting department	476.25		476.25
3	General office sundries		392.54	392.54
4	Canvassing	364.55		364.55
5	Insurance			
6	Rentals		325.74	325.74
7	Interest			
8	Taxes		207.22	207.22
9	Legal exp., loss & damages		1.00	1.00
10	Stationery, ptg. & postage		93.04	93.04
11	Stable expenses	90.19		90.19
	Manufacturing:			
13	Generator fuel			
14	Gas coal		1069.35	1069.35
15	Boiler fuel		33.61	33.61
16	Bench fuel		335.23	335.23
17	Manufacturing labor	805.06		805.06
18	Manufacturing supplies		17.97	17.97
19	Oil			
20	Enrichers		78.40	78.40
21	Purification labor	18.75		18.75
22	Purification supplies		156.14	156.14
	Distribution:			
23	Distribution labor	119.11		119.11
24	Distribution supplies	29.32	36.50	65.82
	Miscellaneous:			
26	Mscl. supplies & expenses		13.02	13.02
	Repairs & renewals:			
27	Repairs & renewals meters	2.56	6.66	9.22
28	Repairs & renewals services	14.85	1.60	16.45
29	Bench repairs			
30	Gas house & mach'y repairs	4.00	149.06	153.06
31	Repairs & renewals mains			
		3037.14	2917.08	5954.22

713 *Operating Statement, Month of September,* 1900.

Gas sold as per consumers' meters:	Light	1,437,900	
	Fuel	2,940,600	
			4,378,500 c. f.
Total expenditures as per statement below			$4892.70
Less value of residuals made:			
1,009,729 lbs. coke	at $3.25 per ton	1640.81	
59,271 " breeze	at 1.00 " "	29.64	
- - - " retort carbon	at " cwt	- - -	
5,294 gal. tar	at .05 " gal.	264.70	
5,727 lbs. ammonia	at .08 " lb.	458.16	
			2393.31
Expenditures after deducting value of residuals			$2499.39
Add depreciation at 6½% per an. on cost of property			2294.61
Add interest at 10% per annum on cost of property			3618.77
Total cost			$8412.77
Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) and including interest at 10% per annum on cost of property			1.921 +
Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) but not including interest			1.094 +
Cost of gas per thousand cubic feet, excluding value of resids			1.117 +
Cost of gas per thousand cubic feet, after deducting value of residuals made, not including depreciation or interest			.570 +

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	337.50		337.50
2	Accounting department	320.00		320.00
3	General office sundries		28.67	28.67
4	Canvassing	231.90	41.26	273.16
5	Insurance			
6	Rentals		65.75	65.75
7	Interest			
8	Taxes		207.22	207.22
9	Legal exp., loss & damages		129.28	129.28
10	Stationery, ptg. & postage		136.90	136.90
11	Stable expenses	103.13		103.13
	Manufacturing:			
13	Generator fuel			
14	Gas coal		1284.69	1284.69
15	Boiler fuel		44.85	44.85
16	Bench fuel		533.10	533.10
17	Manufacturing labor	784.20		784.20
18	Manufacturing supplies		238.20	238.20
19	Oil			
20	Enrichers		99.14	99.14
21	Purification labor	38.91		38.91
22	Purification supplies	36.50	2.70	39.20
	Distribution:			
23	Distribution labor	101.20		101.20
24	Distribution supplies	17.39	22.54	39.93
	Miscellaneous:			
26	Mscl. supplies & expenses		31.69	31.69
	Repairs & renewals:			
27	Repairs & renewals meters	.58	2.30	2.88
28	Repairs & renewals services	5.45	.39	5.84
29	Bench repairs		44.84	44.84
30	Gas house & mach'y repairs			
31	Repairs & renewals mains	2.14	.28	2.42
		1978.90	2913.80	4982.70

714 *Operating Statement, Month of October,* 1900.

Gas sold as per consumers' meters: Light..... 2,070,000
Fuel..... 3,257,900 — 5,327,900 c. f.

Total expenditures as per statement below..... $5748.39

Less value of residuals made:

912,290	lbs. coke	at $3.25	per	ton	1482.47
32,105	" breeze	at 1.00	"	"	16.05
- - -	" retort carbon	at		cwt	- - -
7,657	gal. tar	at .05	"	gal	382.85
2494.4	lbs. ammonia	at .08	"	lb	199.55
					2080.92

Expenditures after deducting value of residuals	$3667.47
Add depreciation at 6½% per an. on cost of property	2294.61
Add interest at 10% per annum on cost of property	3618.77
Total cost	$9580.85

Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) and including interest at 10% per annum on cost of property ..... 1.798 +

Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) but not including interest .. 1.119 +

Cost of gas per thousand cubic feet, excluding value of resids ..... 1.078 +

Cost of gas per thousand cubic feet, after deducting value of residuals made, not including depreciation or interest .. .. .688 +

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	392.50		392.50
2	Accounting department	350.00		350.00
3	General office sundries		77.56	77.56
4	Canvassing	419.89	51.09	470.98
5	Insurance		189.75	189.75
6	Rentals		27.50	27.50
7	Interest			
8	Taxes		207.22	207.22
9	Legal exp., loss & damages		492.50	492.50
10	Stationery, ptg. & postage		58.08	58.08
11	Stable expenses	218.50		218.50
	Manufacturing:			
13	Generator fuel			
14	Gas coal		1392.20	1392.20
15	Boiler fuel		105.06	105.06
16	Bench fuel		354.75	354.75
17	Manufacturing labor	898.74		898.74
18	Manufacturing supplies		57.00	57.00
19	Oil			
20	Enrichers		109.86	109.86
21	Purification labor	18.25		18.25
22	Purification supplies			
	Distribution:			
23	Distribution labor	226.32		226.32
24	Distribution supplies	13.35	39.45	52.80
	Miscellaneous:			
26	Mscl. supplies & expenses		31.00	31.00
	Repairs & renewals:			
27	Repairs & renewals meters	2.35		2.35
28	Repairs & renewals services	8.17	1.65	9.82
29	Bench repairs			
30	Gas house & mach'y repairs		5.35	5.35
31	Repairs & renewals mains			
		2548.37	3200.02	5748.39

715 *Operating Statement, Month of November,* 1900.

Gas sold as per consumers' meters: Light				2,211,500	
Fuel				2,454,500	
					4,666,000 c. f.
Total expenditures as per statement below					$5530.66
Less value of residuals made:					
707,109 lbs. coke	at $3.25	per ton		1149.05	
27,580 " breeze	at 1.00	" "		13.80	
- - - " retort carbon	at	"	cwt	- -	
7,405 gal. tar	at .05	"	gal	370.25	
2233.7 lbs. ammonia	at .08	"	lb	178.70	
					1711.80
Expenditures after deducting value of residuals					$3818.86
Add depreciation at 6½% per an. on cost of property					2294.61
Add interest at 10% per annum on cost of property					3618.77
Total cost					$9732.24

Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) and including interest at 10% per annum on cost of property ..... 2.087+

Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) but not including interest..... 1.310+

Cost of gas per thousand cubic feet, excluding value of resids..... 1.185+

Cost of gas per thousand cubic feet, after deducting value of residuals made, not including depreciation or interest..... .818+

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	312.50		312.50
2	Accounting department	350.00		350.00
3	General office sundries		65.47	65.47
4	Canvassing		7.12	7.12
5	Insurance		10.00	10.00
6	Rentals		252.50	252.50
7	Interest			
8	Taxes		207.22	207.22
9	Legal exp., loss & damages		872.75	872.75
10	Stationery, ptg. & postage		121.28	121.28
11	Stable expenses	100.85		100.85
	Manufacturing:			
13	Generator fuel			
14	Gas coal		1299.97	1299.97
15	Boiler fuel		96.00	96.00
16	Bench fuel		326.39	326.39
17	Manufacturing labor	770.20		770.20
18	Manufacturing supplies		15.55	15.55
19	Oil			
20	Enrichers		175.30	175.30
21	Purification labor	23.25		23.25
22	Purification supplies			
	Distribution:			
23	Distribution labor	195.65		195.65
24	Distribution supplies	6.73	118.76	125.49
	Miscellaneous:			
26	Mscl. supplies & expenses	2.00	48.30	50.30
	Repairs & renewals:			
27	Repairs & renewals meters	27.47		27.47
28	Repairs & renewals services	15.11	12.04	27.15
29	Bench repairs			
30	Gas house & mach'y repairs	54.75	43.50	98.25
31	Repairs & renewals mains			
		1858.51	3672.15	5530.66

716 *Operating Statement, Month of December,* 1900.

Gas sold as per consumers' meters: Light 2,580,600
Fuel ..... 2,158,900 — 4,739,500 c. f.

Total expenditures as per statement below $6641.35

Less value of residuals made:

759,315 lbs.	coke	at $3.25	per ton	1233.89	
17,91[illegible]	breeze	at 1.00 "	"	8.96	
- - - "	retort carbon	at	" cwt	- - -	
9,731 gal.	tar	at .05 "	gal	486.55	
2212.3 lbs.	ammonia	at .08 "	lb	176.98	
					1906.38

Expenditures after deducting value of residuals $4734.97
Add depreciation at 6½% per an. on cost of property 2294.61
Add interest at 10% per annum on cost of property 3618.77

Total cost $10648.35

Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) and including interest at 10% per annum on cost of property ..... 2.248+

Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) but not including interest.. 1.497+

Cost of gas per thousand cubic feet, excluding value of resids .... 1.416+

Cost of gas per thousand cubic feet, after deducting value of residuals made, not including depreciation or interest..... .999+

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	312.50		312.50
2	Accounting department	350.00		350.00
3	General office sundries		137.23	137.23
4	Canvassing			
5	Insurance			
6	Rentals		140.75	140.75
7	Interest			
8	Taxes		207.22	207.22
9	Legal exp., loss & damages		59.50	59.50
10	Stationery, ptg. & postage		2008.25	2008.25
11	Stable expenses	114.33		114.33
	Manufacturing:			
13	Generator fuel			
14	Gas coal		1379.05	1379.05
15	Boiler fuel		151.13	151.13
16	Bench fuel		350.11	350.11
17	Manufacturing labor	833.11		833.11
18	Manufacturing supplies		18.77	18.77
19	Oil			
20	Enrichers		178.97	178.97
21	Purification labor	2.75		2.75
22	Purification supplies			
	Distribution:			
23	Distribution labor	177.03		177.03
24	Distribution supplies	6.49	25.18	31.67
	Miscellaneous:			
26	Mscl. supplies & expenses		19.21	19.21
	Repairs & renewals:			
27	Repairs & renewals meters	24.33	9.61	33.94
28	Repairs & renewals services			
29	Bench repairs	5.75	7.34	13.09
30	Gas house & mach'y repairs	39.57	64.70	104.27
31	Repairs & renewals mains	7.50	10.97	18.47
		1873.36	4769.99	6641.35

717 *Operating Statement, Month of January, 1901.*

Gas sold as per consumers' meters:	Light	2,895,700	
	Fuel	2,110,600	
			5,006,300 c. f.
Total expenditures as per statement below			$6314.12
Less value of residuals made:			
819,753 lbs. coke	at $3.25 per ton	1332.10	
21,290 " breeze	at 1.00 " "	10.64	
3,355 " retort carbon	at .12½ cwt	20.84	
5,016 gal. tar	at .05 per gal	250.80	
2062 3 lbs. ammonia	at .08 " lb.	164.98	
			1779.36
Expenditures after deducting value of residuals			$4534.76
Add depreciation at 6½% per an. on cost of property			2294.61
Add interest at 10% per annum on cost of property			3618.77
Total cost			$10448.14
Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) and including interest at 10% per annum on cost of property			2.087 —
Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) but not including interest			1.364 +
Cost of gas per thousand cubic feet, excluding value of resids			1.261 +
Cost of gas per thousand cubic feet, after deducting value of residuals made, not including depreciation or interest			.905 +

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	312.50		312.50
2	Accounting department	277.12		277.12
3	General office sundries		121.76	121.76
4	Canvassing	204.89		204.89
5	Insurance			
6	Rentals		27.50	27.50
7	Interest			
8	Taxes		450.00	450.00
9	Legal exp., loss & damages		1639.67	1639.67
10	Stationery, ptg. & postage		100.40	100.40
11	Stable expenses	117.83		117.83
	Manufacturing:			
13	Generator fuel			
14	Gas coal		1460.92	1460.92
15	Boiler fuel		177.47	177.47
16	Bench fuel		295.26	295.26
17	Manufacturing labor	821.74		821.74
18	Manufacturing supplies		20.85	20.85
19	Oil			
20	Enrichers		23.85	23.85
21	Purification labor	21.38		21.38
22	Purification supplies			
	Distribution:			
23	Distribution labor	162.17		162.17
24	Distribution supplies	19.31	4.90	24.21
	Miscellaneous:			
26	Misel. supplies & expenses		8.90	8.90
	Repairs & renewals:			
27	Repairs & renewals meters	3.08	6.65	9.73
28	Repairs & renewals services			
29	Bench repairs		1.90	1.90
30	Gas house and mach'y repairs	12.26	21.81	34.07
31	Repairs & renewals mains			
		1952.28	4361.84	6314.12

718 *Operating Statement, Month of February*, 1901.

Gas sold as per consumers' meters: Light 2,212,800
Fuel 1,873,000
4,085,800 c. f.

Total expenditures as per statement below $5734.25

Less value of residuals made:

616,228	lbs.	coke	at $3.25 per ton	1001.37	
30,897	"	breeze	at 1.00 " "	15.45	
- - -	"	retort carbon	at " cwt	- - -	
5,133	gal.	tar	at .05 " gal	256.65	
1,874	lbs.	ammonia	at .08 " lb	149.92	
					1423.39

Expenditures after deducting value of residuals $4310.86
Add depreciation at 6½ % per an. on cost of property 2294.61
Add interest at 10 % per annum on cost of property 3618.77

Total cost $10224.24

Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½ % per annum on cost of property (exclusive of real estate) and including interest at 10 % per annum on cost of property ..... 2.502 +

Cost of gas per thousand cubic feet after deducting value of residuals made and including depreciation at 6½ % per annum on cost of property (exclusive of real estate) but not including interest ..... 1.616 +

Cost of gas per thousand cubic feet, excluding value of resids. ..... 1.403 +

Cost of gas per thousand cubic feet, after deducting value of residuals made, not including depreciation or interest ..... 1.055 +

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	312.50		312.50
2	Accounting department	375.00		375.00
3	General office sundries		54.75	54.75
4	Canvassing	58.33	2.30	60.63
5	Insurance			
6	Rentals		102.50	102.50
7	Interest			
8	Taxes		450.00	450.00
9	Legal exp., loss & damages		1362.40	1362.40
10	Stationery, ptg. & postage		37.35	37.35
11	Stable expenses	104.89		104.89
	Manufacturing:			
13	Generator fuel			
14	Gas coal		1254.23	1254.23
15	Boiler fuel		148.88	148.88
16	Bench fuel		292.27	292.27
17	Manufacturing labor	666.70		666.70
18	Manufacturing supplies		27.10	27.10
19	Oil			
20	Enrichers		62.00	62.00
21	Purification labor	21.50		21.50
22	Purification supplies			
	Distribution:			
23	Distribution labor	169.74		169.74
24	Distribution supplies	46.80	67.38	114.18
	Miscellaneous:			
26	Mscl. supplies & expenses			
	Repairs & renewals:			
27	Repairs & renewals meters	28.30	30.02	58.32
28	Repairs & renewals services			
29	Bench repairs			
30	Gas house & mach'y repairs	9.31	50.00	59.31
31	Repairs & renewals mains			
		1793.07	3941.18	5734.25

7184 *Operating Statement, Month of March,* 1901.

Gas sold as per consumers' meters:	Light	2,105,400	
	Fuel	2,013,600	
			4,119,000 c
Total expenditures as per statement below			$4914.54
Less value of residuals made:			
711,811 lbs. coke	at $3.25 per ton	1156.59	
32,055 " breeze	at 1.00 " "	16.03	
- - - " retort carbon	at " cwt.	- - -	
6,323 gal. tar	at .05 " gal.	316.15	
1770.3 lbs. ammonia	at .08 " lb.	141.62	
			1630.39
Expenditures after deducting value of residuals			$3284.15
Add depreciation at 6½% per an. on cost of property			2294.61
Add interest at 10% per annum on cost of property			3618.77
Total cost			$9197.53
Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) and including interest at 10% per annum on cost of property			2.332 +
Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) but not including interest			1.354 +
Cost of gas per thousand cubic feet, excluding value of resids			1.193 +
Cost of gas per thousand cubic feet, after deducting value of residuals made, not including depreciation or interest			.797 +

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	387.50		387.50
2	Accounting department	336.97		336.97
3	General office sundries	42.36	18.35	60.71
4	Canvassing	145.93		145.93
5	Insurance			
6	Rentals		200.00	200.00
7	Interest			
8	Taxes		450.00	450.00
9	Legal exp., loss & damages		219.50	219.50
10	Stationery, ptg. & postage		112.17	112.17
11	Stable expenses			
	Manufacturing:			
13	Generator fuel			
14	Gas coal		1372.04	1372.04
15	Boiler fuel		114.39	
16	Bench fuel		341.12	341.12
17	Manufacturing labor	632.74		632.74
18	Manufacturing supplies		68.54	68.54
19	Oil			
20	Enrichers		39.95	39.95
21	Purification labor	5.00		5.00
22	Purification supplies			
	Distribution:			
23	Distribution labor	198.41		198.41
24	Distribution supplies	45.90	16.01	61.91
	Miscellaneous:			
26	Mscl. supplies & expenses	46.50	3.37	49.87
	Repairs & renewals:			
27	Repairs & renewals meters	13.90	4.21	18.11
28	Repairs & renewals services			
29	Bench repairs		3.93	3.93
30	Gas house & mach'y repairs	14.50	31.43	45.93
31	Repairs & renewals mains	30.98	18.34	49.32
		1900.69	3013.85	4914.54

719 *Operating Statement, Month of April,* 1901.

Gas sold as per consumers' meters: Light..... 1,796,800
Fuel..... 2,065,200
3,862,000 c. f.

Total expenditures as per statement below..... $4077.51

Less value of residuals made:

650,981 lbs. coke	at $3.25 per	ton	1057.84	
25,430 " breeze	at 1.00 "	"	12.72	
- - - " retort carbon	at "	cwt	- - -	
6,299 gal. tar	at .05 "	gal	314.95	
1840.2 lbs. ammonia	at .08 "	lb	147.22	
				1532.73

Expenditures after deducting value of residuals..... $2544.78
Add depreciation at 6½% per an. on cost of property..... 2294.61
Add interest at 10% per annum on cost of property..... 3618.77

Total cost..... **$8458.16**

Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) and including interest at 10% per annum on cost of property ..... 2.190 +

Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) but not including interest.. 1.253 +

Cost of gas per thousand cubic feet, excluding value of resids ..... 1.055 +

Cost of gas per thousand cubic feet, after deducting value of residuals made, not including depreciation or interest.. ..... .658 +

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	287.50		287.50
2	Accounting department	275.00		275.00
3	General office sundries	13.25	9.06	22.31
4	Canvassing	86.26		86.26
5	Insurance			
6	Rentals		55.00	55.00
7	Interest			
8	Taxes		450.00	450.00
9	Legal exp., loss & damages		210.00	210.00
10	Stationery, ptg. & postage		25.29	25.29
11	Stable expenses	90.11	90.11	
	Manufacturing:			
13	Generator fuel			
14	Gas coal		1341.45	1341.45
15	Boiler fuel		57.07	57.07
16	Bench fuel		228.98	228.98
17	Manufacturing labor	567.70		567.70
18	Manufacturing supplies			
19	Oil			
20	Enrichers			
21	Purification labor	20.77		20.77
22	Purification supplies			
	Distribution:			
23	Distribution labor	149.11		149.11
24	Distribution supplies	53.28	42.16	95.44
	Miscellaneous:			
26	Mscl. supplies & expenses	3.90	15.20	19.10
	Repairs & renewals:			
27	Repairs & renewals meters	22.31	7.10	29.41
28	Repairs & renewals services	1.65	5.00	6.65
29	Bench repairs	1.63		1.63
30	Gas house & mach'y repairs	25.97	30.01	55.98
31	Repairs & renewals mains		2.75	2.75
		1598.44	2479.07	4077.51

720 *Operating Statement, Month of May, 1901.*

Gas sold as per consumers' meters: Light	1,517,300		
Fuel	2,605,900		
			4,123,200 c. f.
Total expenditures as per statement below			$4229.05
Less value of residuals made:			
662,256 lbs. coke at $3.25 per ton		1076.17	
36,350 " breeze at 1.00 " "		18.18	
- - - " retort carbon at " cwt.		- -	
6,932 gal. tar at .05 " gal		341.60	
1657.7 lbs. ammonia at .08 " lb		132.78	
			1568.73
Expenditures after deducting value of residuals			$2660.32
Add depreciation at 6½% per an. on cost of property			2294.61
Add interest at 10% per annum on cost of property			3618.77
Total cost			$8573.70
Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) and including interest at 10% per annum on cost of property			2.079 +
Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) but not including interest			1.201 +
Cost of gas per thousand cubic feet, excluding value of resids			1.025 +
Cost of gas per thousand cubic feet, after deducting value of residuals made, not including depreciation or interest			.645 +

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	287.50		287.50
2	Accounting department	294.00		294.00
3	General office sundries		53.42	53.42
4	Canvassing	176.25		176.25
5	Insurance		45.00	35.00
6	Rentals		65.00	65.00
7	Interest			
8	Taxes		450.00	450.00
9	Legal exp., loss & damages			
10	Stationery, ptg. & postage		39.06	39.06
11	Stable expenses	159.74		159.74
	Manufacturing:			
13	Generator fuel			
14	Gas coal		1226.76	1226.76
15	Boiler fuel		66.20	66.20
16	Bench fuel		238.53	238.53
17	Manufacturing labor	607.58		607.58
18	Manufacturing supplies		23.85	23.85
19	Oil			
20	Enrichers			
21	Purification labor	15.86		15.86
22	Purification supplies			
	Distribution:			
23	Distribution labor	189.89		189.89
24	Distribution supplies	61.28	108.72	170.00
	Miscellaneous:			
26	Mscl. supplies & expenses	4.25		4.25
	Repairs & renewals:			
27	Repairs & renewals meters	21.69		21.69
28	Repairs & renewals services			
29	Bench repairs	1.35		1.25
30	Gas house & mach'y repairs	72.17	30.95	103.12
31	Repairs & renewals mains			
		1891.56	2337.49	4229.05

721 *Operating Statement, Month of June,* 1901.

Gas sold as per consumers' meters: Light 1,115,800
Fuel ..... 2,542,900 — 3,658,700 c. f.

Total expenditures as per statement below $4017.49

Less value of residuals made:

647,889 lbs.	coke	at $3.25 per ton	1054.44	
24,440 "	breeze	at 1.00 " "	12.22	
- - - "	retort carbon	at " cwt	- - -	
5,519 gal.	tar	at .05 " gal	275.95	
1716.6 lbs.	ammonia	at .08 " lb	137.33	
				1479.94

Expenditures after deducting value of residuals $2537.55
Add depreciation at 6½% per an. on cost of property 2294.61
Add interest at 10% per annum on cost of property 3618.77

Total cost **$8450.93**

Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) and including interest at 10% per annum on cost of property ..... 2.309 +

Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) but not including interest .. 1.320 +

Cost of gas per thousand cubic feet, excluding value of resids ..... 1.098 +

Cost of gas per thousand cubic feet, after deducting value of residuals made, not including depreciation or interest ..... .693 +

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	250.00	250.00	
2	Accounting department	384.17		384.17
3	General office sundries		65.50	65.50
4	Canvassing	163.60		163.60
5	Insurance		35.00	35.00
6	Rentals		97.50	97.50
7	Interest			
8	Taxes		450.00	450.00
9	Legal exp., loss & damages		48.00	48.00
10	Stationery, ptg. & postage		21.30	21.30
11	Stable expenses	84.14		84.14
	Manufacturing:			
13	Generator fuel			
14	Gas coal		1097.32	1097.32
15	Boiler fuel		78.77	78.77
16	Bench fuel		238.80	238.80
17	Manufacturing labor	533.39		533.39
18	Manufacturing supplies		18.63	18.63
19	Oil			
20	Enrichers			
21	Purification labor	10.93		10.93
22	Purification supplies			
	Distribution:			
23	Distribution labor	118.82		118.82
24	Distribution supplies	41.59	53.31	94.90
	Miscellaneous:			
26	Mscl. supplies & expenses	10.58	22.47	33.05
	Repairs & renewals:			
27	Repairs & renewals meters	7.55	1.52	9.07
28	Repairs & renewals services	3.95	4.03	7.98
29	Bench repairs			
30	Gas house & mach'y repairs	84.58	92.04	176.62
31	Repairs & renewals mains			
		1693.30	2324.19	4017.49

722 *Operating Statement, Month of July, 1901.*

Gas sold as per consumers' meters:	Light					971,300	
	Fuel					2,744,300	
							3,715,600 c. f.
Total expenditures as per statement below							$4306.56
Less value of residuals made:							
590,963 lbs. coke	at $3.25	per	ton			960.31	
30,560 " breeze	at 1.00	"	"			15.28	
- - - " retort carbon	at	"	cwt			- - -	
5,285 gal. tar	at .05	"	gal			264.25	
1143.2 lbs. ammonia	at .08	"	lb.			91.46	
							1351.30
Expenditures after deducting value of residuals							$2975.26
Add depreciation at 6½% per an. on cost of property							2294.61
Add interest at 10% per annum on cost of property							3618.77
Total cost							$8888.64
Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) and including interest at 10% per annum on cost of property							2.392 +
Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½% per annum on cost of property (exclusive of real estate) but not including interest							1.418 +
Cost of gas per thousand cubic feet, excluding value of resids							1.159 +
Cost of gas per thousand cubic feet, after deducting value of residuals made, not including depreciation or interest							.800 +

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	250.00		250.00
2	Accounting department	394.17		394.17
3	General office sundries		15.96	15.96
4	Canvassing	384.30		384.30
5	Insurance			
6	Rentals		75.00	75.00
7	Interest			
8	Taxes		450.00	450.00
9	Legal exp., loss & damages		56.50	56.50
10	Stationery, ptg. & postage		393.00	393.00
11	Stable expenses	99.44		99.44
	Manufacturing:			
13	Generator fuel			
14	Gas coal		999.08	999.08
15	Boiler fuel		76.81	76.81
16	Bench fuel		227.56	227.56
17	Manufacturing labor	596.72		596.72
18	Manufacturing supplies	.60	33.66	34.26
19	Oil			
20	Enrichers			
21	Purification labor	2.80		2.80
22	Purification supplies			
	Distribution:			
23	Distribution labor	140.05		140.05
24	Distribution supplies	25.32	11.83	37.15
	Miscellaneous:			
26	Mscl. supplies & expenses	17.80	1.90	19.70
	Repairs & renewals:			
27	Repairs & renewals meters	11.13	2.83	13.96
28	Repairs & renewals services			
29	Bench repairs			
30	Gas house and mach'y repairs	5.61	34.49	40.10
31	Repairs & renewals mains			
		1927.94	2378.62	4306.56

723 *Operating Statement, Month of August, 1901.*

Gas sold as per consumers' meters: Light 830,400
Fuel 2,665,400
3,495,800 c. f.

Total expenditures as per statement below $3850.63

Less value of residuals made:

693,785 lbs.	coke	at $3.25	per	ton	1127.40
26,230 "	breeze	at 1.00	"	"	13.12
- - - "	retort carbon	at	"	cwt	- - -
5,151 gal.	tar	at .05	"	gal	257.55
1707.4 lbs.	ammonia	at .08	"	lb.	136.59
					1534.66

Expenditures after deducting value of residuals $2315.97
Add depreciation at 6¼ % per an. on cost of property 2294.61
Add interest at 10 % per annum on cost of property 3618.77

Total cost **$8229.35**

Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½ % per annum on cost of property (exclusive of real estate) and including interest at 10 % per annum on cost of property ..... 2.354 +

Cost of gas per thousand cubic feet, after deducting value of residuals made and including depreciation at 6½ % per annum on cost of property (exclusive of real estate) but not including interest. ... 1.318 +

Cost of gas per thousand cubic feet, excluding value of resids ..... 1.101 +

Cost of gas per thousand cubic feet, after deducting value of residuals made, not including depreciation or interest ..... .662 +

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	250.00		250.00
2	Accounting department	384.17		384.17
3	General office sundries		10.95	10.95
4	Canvassing	203.50		203.50
5	Insurance			
6	Rentals		75.00	75.00
7	Interest			
8	Taxes		450.00	450.00
9	Legal exp., loss & damages		100.00	100.00
10	Stationery, ptg. & postage		40.22	40.22
11	Stable expenses	104.09		104.09
	Manufacturing:			
13	Generator fuel			
14	Gas coal		1033.96	1033.96
15	Boiler fuel		75.93	75.93
16	Bench fuel		242.28	242.28
17	Manufacturing labor	573.30		573.30
18	Manufacturing supplies		12.35	12.35
19	Oil			
20	Enrichers		5.23	5.23
21	Purification labor	5.25		5.25
22	Purification supplies			
	Distribution:			
23	Distribution labor	141.07		141.07
24	Distribution supplies	27.96	23.66	51.62
	Miscellaneous:			
26	Mscl. supplies & expenses	7.50	16.57	24.07
	Repairs & renewals:			
27	Repairs & renewals meters			
28	Repairs & renewals services	7.00	.37	7.37
29	Bench repairs	3.31	2.46	5.77
30	Gas house & mach'y repairs	28.15	26.35	54.50
31	Repairs & renewals mains			
		1735.30	2115.33	3850.63

724 Following is a statement of the number of retorts in action and amount of gas made per retort from the commencement of business of the Peoria Gas & Electric Company down to and including August 31, 1901.

Month.	Number retorts in action.	Cubic feet gas made per retort.	Average candle power.
1900.			
April	12.6	6448	18.8
May	19.6	7166	18.4
June	24.0	7382	19.3
July	22.8	7329	*
August	18.2	7167	18.4
September	21.0	7675	18.4
October	24.1	7135	19.8
November	18.0	9394	18.6
December	19.8	8767	17.5
1901.			
January	18.0	9296	18.0
February	16.8	9283	19.2
March	18.0	7965	18.5
April	18.0	7942	17.8
May	17.8	8047	17.5
June	18.0	7625	18.6
July	18.0	6777	17.0
August	17.8	7122	16.9

* Photometer out of order.

725 Following is a monthly statement of the amount of gas made, the average yield of gas per pound of coal carbonized, the per cent. of coke made used under the benches and boilers, and the yield expressed in gallons of tar made by the Peoria Gas and Electric Company from the beginning of the business of that company down to and including August 31, 1901.

	Cubic feet gas made.	Gas per lb. coal.	% coke used to coke made.	Gallons tar made.
1900.				
April	2,437,400	5.28	65.7	
May	4,303,300	5.30	49.5	
June	5,315,300	4.90	27.9	
July	5,181,300	4.96	31.8	
August	4,142,200	4.82	34.6	6085
September	4,840,300	4.76	36.0	5294
October	5,330,400	4.85	14.6	7657
November	5,072,600	4.96	30.4	6204
December	5,371,800	4.93	30.2	9731
1901.				
January	5,187,200	5.06	27.8	6666
February	4,399,400	5.12	31.1	5133
March	4,444,700	5.10	33.6	6323
April	4,304,700	5.11	25.3	6299
May	4,437,700	5.09	27.4	6822
June	4,117,400	4.89	26.2	5519
July	3,757,400	4.91	28.4	5285
August	3,926,000	4.29	25.0	5151
	55,189,600	4.97	27.1	76094

NOTE.—The ammonia apparatus and tar and ammonia wells were incomplete and no record of ammonia or tar production was kept until August.

726 32. In one of these tabulated reports you show that during the month of April 1900, there were 12 6/10 retorts in action. What do you mean by 12 6/10 retorts being in action?

A. In April 1900, there were two benches containing nine retorts each, in operation and fired up for the making of gas; the capacity of these benches, however, when all the retorts were in use was more than the amount of gas demanded by the public, therefore, some of the retorts were not in use; the number of retorts in use is usually stated among gas men as being "in action;" the number of retorts in action vary from day to day, and a record of the number so actually producing gas was kept and the total number thus in use each day was added up and divided by the number of days in use to get the average number of retorts in action.

33. Then when you show by your tabulated statement there were only 18 retorts in action, you mean there were only two benches?

A. Yes sir; only two benches then being used; you understand that these are benches of 9's, and if the number exceeds 9 or any multiple of 9, then an additional bench is required to be brought under fire.

34. I noticed that in June 1900, the average candle power of the gas manufactured was 19 3/10 to 19 8/10—How do you account for the difference in the candle power of the gas manufactured?

A. Whenever the gas is above 17½ to 18 candles it was enriched

with oil naphtha; from 17 to 18 candles it was enriched with canne coal and under 17 candles no enricher was used.

35. How many clerks were engaged in the accounting department of the Peoria Gas & Electric Co., during the month of June 1900?

Objected to by complainant as not cross-examination, incompetent and immaterial.

A. I cannot recollect the exact number; we had a cashier, a head bookkeeper, an assistant bookkeeper, a complaint clerk, a stenographer, and if I remember rightly, one solicitor, whose com-
727 pensation was also charged to the accounting department.

36. Did these clerks so employed in the office of the Peoria Gas & Electric Company attend to any of the business of the electric branch of said company?

Ans. Not in that month.

37. Were those the only persons employed by the Peoria Gas & Electric Co., in the accounting department during the month of June, 1900?

Ans. No.

38. What other persons were employed?

A. We had clerks in the electric department who looked after the electric business.

39. How many clerks were employed in the electric department?

Objected to by complainant as immaterial, incompetent and irrelevant.

40. Who were the clerks employed in the gas department of the Peoria Gas & Electric Co., during the month of June 1900?

Objected to by complainant as not cross-examination, immaterial and incompetent.

The MASTER: I do not see the materiality of it, but the witness may answer subject to the objection.

A. A. P. Colvin, cashier; W. S. Woodworth, bookkeeper; James Trimble, ass't bookkeeper; Frank Philbrick, complaint clerk; Lizzie Pulsipher, stenograper, and C. B. Newman, solicitor. I think also that Chas. S. Easton was employed by the company in June 1900, if I remember rightly. The offices of the company were separate at that time and the gas office was at No. 420 Main St., and the electric office at No. 125 N. Jefferson avenue.

41. In October 1900, according to the tabulated statement of the operating expenses of the company for that month you say that there was $109.86 expended for enrichers, and that by the use of those enrichers you obtained a candle power of 19 8/10 in the manufacture of 5,327,900 cubic feet of gas. In the corresponding
728 operating statement for the succeeding month you state that you expended $175.30, for enrichers and only manufactured 4,666,000 cubic feet of gas, and that the candle power produced was

only 18 6/10. How do you account for the difference in the candle power of the gas under those circumstances?

A. My recollection is that November was a very much colder month than October and that some of the difference in candle power was due to the lower temperature; and further, in the fall of 1900, we experienced a good deal of trouble with our fixing bench which was used for enriching the gas; at that time the fixing bench contained a sectional retort which opened at the joints causing the loss of considerable of the oily vapor which was intended for the enrichment of the gas and permitted of the introduction of air into the retort, which also reduced the candle power; that was the month also when we had a good deal of trouble with nap-thaline as we always do in the fall—interrupted——

Mr. IRWIN: You didn't save the nap-thaline either did you?

The WITNESS: No we did not.

42. In your tabulated statement showing the expenses of the company for the month of February 1901, I find you only expended $62. for enrichers and manufactured 4.085.800 cubic feet of gas, and the candle power produced was 19 2/10. How do you account for the discrepancy between that month and October 1900?

A. My recollection now is that in the latter part of that winter, and probably about the month of February, we got a new retort placed on the fixing bench and were able to bring up the candle power rapidly by the use of a relatively small amount of naphtha. In other words, the fixing bench was working better.

43. I notice that in May 1901, you charged up nothing for enrichers in the expense account and the candle power was 17 5/10, and that in June 1901, under the same conditions, the candle power of the gas was 18 6/10. How do you account for that?

729 A. By the difference in the quality of the coal which we were using at that time the candle power of the gas varied within one or one and a half candle—sometimes as much as two candles, according to the quality of the coal. In other words, whether it was fresh mined coal, or coal that had been exposed to the weather, whether it was free from dust and dirt, or whether it contained a good deal of dust and stuff.

44. In November 1900, was the Peoria Gas & Electric Co., selling gas for fuel purposes at the net price of 85c. per thousand feet with 10c. off if paid before the 10th, of the month?

Objected to by complainant as immaterial, not cross-examination.

A. Yes sir;

45. I notice by your statements that the cost of the manufacture of gas, not including depreciation or interest, during that month was 81c. and 8 mills. Is that a true and correct statement of the cost of the manufacture of gas during that month, not including depreciation or interest?

A. Yes sir; that is a correct statement of the average cost of the gas made during the month of November 1900, excluding depre-

ciation and interest, but after deducting the value of the residuals made.

46. Were you selling fuel gas in the city of Peoria during the month of December, 1900, at 85 cents per thousand feet with 10 cents off if paid on or before the 10th, day of the month in which the bill became due and payable?

Objected to by complainant as not cross-examination, incompetent and immaterial.

The MASTER: I think it competent; the witness may answer subject to the objection.

A. Yes sir;

47. I notice by your operating statement for the month of
730 December 1900, that the cost of gas per thousand cubic feet, after deducting the value of the residuals made, not including depreciation or interest, was 99 cents and 9 mills. Is that a true and correct statement of the cost of the manufacture of gas per thousand feet after deducting the value of the residuals made, not including depreciation or interest?

A. Yes sir; for the month of December 1900.

48. Were you selling gas in January 1901, to consumers for 85 cents per thousand cubic feet with 10 cents off in the event the bill was paid on or before the 10th, of the month in which the bill became due?

Objected to by complainant as not cross-examination, immaterial, incompetent and irrelevant.

The MASTER: I do not think the price at which the company sold gas is conclusive at all as to what it cost to manufacture it, but it is a circumstance I think it competent to show in this case, and the witness may answer subject to the objection.

A. Yes sir.

49. I notice on your tabulated statement of the operating expenses for the month of January 1901, that you state that the cost of gas per thousand cubic feet, after deducting the value of the *the* residuals made and not including depreciation or interest, was 90 cents and 5 mills. Is that a true and correct statement of the cost of manufacturing gas per thousand cubic feet for the month in question as manufactured by the Peoria Gas & Electric Co.?

A. Yes sir.

50. Was the Peoria Gas & Electric Company selling fuel gas in the city of Peoria during the month of February 1901, at the price to consumers of 85 cents with 10 cents off if paid on or before the 10th, day of the month in which the bill fell due?

Objected to by complainant as not cross-examination, incompetent immaterial and irrelevant.

731 A. Yes sir;

51. I notice for the operating statement offered in evidence

for the month of February 1901, that you state therein, that the cost of gas per thousand cubic feet, after deducting the value of the residuals made, and not including depreciation or interest, was $1.05 5/10. Is that a true and correct statement of the cost of the manufacture of the gas made per thousand cubic feet by the Peoria Gas & Electric Co., during that month?

A. Yes sir. In answer to cross-interrogatories commencing with cross-interrogatory 204 on p. 219 and ending with cross-interrogatory 211, on p. 220, I have to say, there were two working orders got out for installing the condensing and purifying apparatus; one covering the installation of the apparatus, properly known as "working order No. 204" issued August 21, 1899; the other issued the same date being "working order No. 206" covering the foundation for the condensing and purifying apparatus. The estimate of the cost under working order No. 204 of the condensing and purifying apparatus was "labor $500; material $17.900" making a total of $18.400. The estimate under working order No. 206 for the foundation was "labor $800; material $900; total $1700."

52. Have you those working orders in your possession?

A. I have copies of them or duplicates; our working orders are all made in duplicate with a carbon sheet; the carbon sheet being put between the two they are exactly alike.

53. Will you bring those duplicate working orders into court to-morrow?

A. Yes sir; I will bring them in to-morrow. Cross-interrogatory No. 212 asked for an estimate of the cost of the benches; I see now that question includes also the cost of the storage holder and I have not the working order of the storage holder. The benches were installed under working order No. 205, issued August 21, 1899,
732 and the estimate was "For labor $600; material $19.398; total $19.998."

54. Have you a copy of that working order in your possession?

A. Yes sir;

55. Together with the estimate made by you at that time?

A. The estimate was not made by me; the estimate was made by the foreman.

56. Together with a copy of the estimate made at the time?

A. Yes sir;

57. Will you bring those into court to-morrow?

A. Yes sir: I will bring them all in.

Cross-interrogatory No. 223, p. 222, asks: "How much gas was in the holder of the Peoria Gas & Electric Company on the morning of September 1, 1900?" My answer to that is; the gas on hand on the morning of September 1, 1900, was 244.731 cubic feet. There were some other interrogatories asked me to be answered on page 233—interrogatories No. 277, 278 and 279. I find on looking into the matter that when South Adams street, between Cedar and South streets, was paved, the Peoria Gas Light & Coke Co., had three inch mains on that street which had been in a number of years and was

considered by them to be too small, and the foreman of that company came to Mr. Robb, our foreman, and said they wanted to cut off their main and connect certain services onto our main. I find that the services at No. 1507, No. 1509, No. 2003, No. 2035, No. 2109 and No. 2111 S. Adams St., were attached to our mains and that the gas passing through those services into the meters of the consumers has been charged by us to the Peoria Gas Light & Coke Company, and that they have paid us for it.

58. What price has the Peoria Gas Light & Coke Co., paid your company for that gas?

A. The same price as everybody else paid, viz:—75 cents for fuel and $1.15 for light up to the 1st, day of November 1901,
733 and since that time they have paid us $1.00 per thousand cubic feet.

59. For what distance did the Peoria Gas Light & Coke Co., abandon its mains on S. Adams street?

A. So far as my knowledge goes from Cedar to South street.

60. Then they practically turned over to you all of the consumers on S. Adams street from Cedar to South street did they?

Objected to as calling for the conclusion of the witness.

The MASTER: Let the witness state what was done; that is all he can do; his conclusions would not be proper.

A. All I know about it is that these six consumers were connected up to our mains and our men read the meters and charge the gas to the Peoria Gas Light & Coke Company.

61. Did you furnish any gas to the hose house of the city of Peoria located on S. Adams street, between Cedar and South streets?

A. I don't think so; I have no recollection of furnishing any gas to the hose house at that point.

Adjourned by agreement until Friday, January 10, 1902, at 10 a. m.

United States court room, Government building.

PEORIA, ILL., FRIDAY, *January* 10, 1902—10 a. m.

Parties met pursuant to adjournment.
Present same as before.

Cross-examination of F. W. LITTLE resumed by Mr. Mansfield:

The WITNESS: I now have with me the working orders and estimates called for yesterday which I promised to produce this morning which said working orders and estimates read in the words and figures following, to wit:—

Working Order Requisition No. 204.

Peoria Gas & Electric Company.

PEORIA, ILLINOIS, *August* 21*st*, 1899.

To the general manager:

734 The following work account No. 34 is necessary. Pleas furnish me with working order authorizing the same.

Installing purifying and condensing apparatus. Probable cost o this work will be:—Labor $500.00; material $17.900.00; tota $18.400.

C. H. CHRISTIE,
Superintendent.

Working order No. 204 issued for above work August 21, 1899.

F. W. LITTLE,
General Manager.

Working Order Requisition No. 205.

Peoria Gas & Electric Company.

PEORIA, ILLINOIS, *August* 21, 1899.

To the general manager:

The following work account No. 34 is necessary. Please furnish me with working order authorizing same.

Installing benches in retort house. Probable cost of this work will be;—Labor $600.00; material $19.398.00; total $19.998.00.

C. H. CHRISTIE,
Superintendent.

Working order No. 205 issued for above work, August 21, 1899.

F. W. LITTLE,
General Manager.

Working Order Requisition No. 206.

Peoria Gas & Electric Company.

PEORIA, ILLINOIS, *August* 21, 1899.

To the general manager:

The following work account No. 34 is necessary. Please furnish me with working order authorizing same.

Foundation for purifying and condensing apparatus. Probable cost of this work will be:—Labor $800; material $900; total $1700.

C. H. CHRISTIE,
Superintendent.

Working order No. 206 issued for above work August 21, 1899.

F. W. LITTLE,
General Manager.

735 *Working Order Requisition No.* 208.

Peoria Gas & Electric Company.

PEORIA, ILLINOIS, *August* 21, 1899.

To the general manager:

The following work account No. 34 is necessary. Please furnish me with working order authorizing same.

Erecting storage holder. Probable cost of this work will be:—Labor $400.; material $23,000.; total $23,400.

C. H. CHRISTIE, *Foreman.*

Working order No. 208 issued for above work, August 21, 1899.

F. W. LITTLE,
General Manager.

63. Are those working order- true and correct copies of the working orders as shown by the vouchers on file in the office of the Audit Company of Illinois in Chicago?

Objected to by complainant as incompetent and immaterial as a comparison of the two would certainly be the best evidence.

The MASTER: The witness may answer if he can.

A. These are correct copies of the working order requisition on file in the office of the Audit Company of Illinois in Chicago.

64. Are those the only estimates that were made for the work done under those orders as shown by the vouchers and sub-vouchers on file in the office of the Audit Company of Illinois at Chicago?

A. My recollection is that another working order was got out covering the foundation of the storage holder but I am not entirely clear as to that. Aside from that, I believe these are the only estimates which were made covering the installation of the benches, the condensing and purifying apparatus and the holder.

736 Re-direct interrogatories by Mr. ABBOTT:

1. It appeared from your testimony yesterday that there were some 60 odd service pipes on South Adams street that were laid only from the street main to the curb line, or a little beyond, but not into the premises of consumers. I will ask you to state how those service pipes came to be so laid?

A. Those service pipes, which we commonly call "service stubbs" and which are the pipes leading from the main only to a point immediately back of the curb, were laid just prior to the paving of the

street by direction received from the office of the commissioner of public works and to avoid the necessity of opening the pavement when any of the adjacent residences desired to use gas.

Defendant's counsel objects to the foregoing answer as immaterial, incompetent and not the best evidence because the orders received from the office of the commissioner of public works would be the best evidence, and moves the court to exclude it.

2. I do not ask you to state the contents of any orders received from the city council, or the commissioner of public works, but I will ask you to state whether those pipes were laid in accordance with and because of directions so received?

Objected to by defendant as immaterial, incompetent, not the best evidence and because it don't tend to prove the issues in the case.

A. They were laid because of directions received from the office of commissioner of public works, and also, because of the requirements of our ordinance—license.

3. Then, if I understand you, they were necessarily required to be laid at the time?

Objected to by defendant same grounds.

737 A. Yes sir.

4. Did they, therefore, become a necessary part of the distributing plant of the Peoria Gas & Electric Co. as the same stood on the first of September, 1900?

Objected to by defendant same grounds.

A. Yes sir.

5. In your cross examination yesterday you were asked a number of questions with reference to statements claimed to have been made by you before the board of review of Peoria county in the month of August, 1901. If, as a matter of fact, you made any of the statements to which your attention was directed yesterday, I will ask you to state on what basis, or theory as to the value of the service pipes of your company, you proceeded in the course of that examination before the board of review, if any was had?

A. I was advised by our counsel, prior to making up the statement and prior to appearing before the board of review, that the valuation to be placed upon the property of the Peoria Gas & Electric Co. should be the then fair, cash value of the property both as to the plant, street mains, services, meters and other property disassociated and separated from the franchise of the company; that its value should be stated by me at its fair cash value, or what it could be sold for disassociated from the franchise and without the right to operate a gas plant; it was on that basis that the property was valued by me and on this basis its value was stated by me before the board of review.

6. You may state whether the service pipes of the company at the date of said statements, if any were made, would be as great as the value of similar pipe not in the ground having reference to the labor which would necessarily be involved in removing the same for the purpose of sale?

738 Objected to by defendant as immaterial and incompetent.

A. The service pipe then being in the ground would not be worth anywhere near the value of such pipe out of the ground since the cost of taking them out of the ground would be nearly or quite as great as the value of the pipe after it was removed.

7. If the statements referred to in your cross examination were made, and as you have now stated the theory or basis on which they were made under the advice of counsel, were such statements on that basis or theory true and correct to the best of your knowledge and belief?

Objected to by defendant as immaterial and incompetent.

The MASTER: I do not think it material but the witness may answer subject to the objection.

Mr. ABBOTT: We withdraw the question.

8. If the questions thus far put to you on re-direct examination have not elicited a full explanation of the theory or basis on which the statements were made by you before the board of review, if any such statements were made, please make such further explanation as you may deem necessary and proper.

A. Before making up the statement for the assessor, I advised with our counsel concerning the basis upon which the statement was to be made, that is, the basis upon which valuations were to be fixed; we made out a schedule in the form required by the local assessor and before that schedule was made out I advised with our counsel, as stated, concerning the basis upon which the schedule was to be made out. Counsel advised me that in making estimates of value I was to consider only the value of the property, as property, disassociated and separate from the license to maintain any structures, which were in the public streets or alleys, that the valuation should be without reference to its specific use as a gas
739 plant in connection with the license from the city; I was also to consider the possible cost of removing those structures from the streets and alleys, and also in valuing the plant, and the various parts of the plant, to take into consideration, the value of the plant, or parts of the plant, in like manner. That is to say, disassociated from the franchise. When I appeared before the board of review counsel was with me and again repeated those instructions; my recollection now is I prefaced my statement to the board of review by saying it was on this basis that the property had been valued by me and I did not intend, and as I now recollect, did not make any statement as to the cost of property, but my statements were based upon the value of the property; that was what I in-

tended to do and what I believe I did do, and I clearly explained to the board the basis upon which the valuations were fixed.

Re-cross interrogatories by Mr. MANSFIELD:

1. You testified, did you not, on your direct examination that the cost of the services as laid in the ground were some thirty odd thousand dollars?

Objected to by complainant as immaterial and not proper recross examination.

The MASTER: I do not think it proper but the witness may answer subject to the objection.

A. The record shows what I testified to in that respect, and if I may be permitted to examine the record I will tell you what I testified to. The statement there in the cost of the property as of September 1, 1900, shows what I testified to as to the cost of those services.

2. And that cost was made up of labor and materials that went into the laying of those pipes?

740 Objected to by complainant same grounds.

The MASTER: The ruling will be the same.

A. Yes sir, the labor, material and relaying of the pavement.

3. When you testified before the board of review, or when you made the statement before the board of review, whichever it was, you testified that the services cost on an average about $3.00 apiece, did you not?

Objected to by complainant as not proper re-cross examination and as assuming something entirely contrary to what the witness stated.

By the MASTER: I don't think it proper re-cross examination but the witness may answer subject to the objection.

A. I have no recollection of making any such statement before the board of review; what I intended to say and believe I did say was that in my opinion that was the value of the pipe in those services at that time.

4. Would the labor of taking up those pipes exceed the labor of laying them down?

A. No, I think not.

FRANCIS W. LITTLE recalled on behalf of complainant, deposes and says:

Direct interrogatories by Mr. ABBOTT:

1. You are the same Francis W. Little who has previously testified in this case?

A. Yes sir.

2. Will you give a description of all the buildings, structures, machinery and apparatus, together with their sizes, con-
741 struction, and character composing the gas plant of the Peoria Gas & Electric Company in the city of Peoria, Ill. as it stood on September 1, 1900?

Objected to by defendant as immaterial, incompetent and not tending to prove the issues in the case and because it has already been testified to by the witness.

The MASTER: This testimony is offered, I suppose, under the stipulation made in connection with the testimony of Harvey W. Brown in this case.

Mr. ABBOTT: Yes sir.

The MASTER: I think it material and competent, and it will be admitted subject to the objection.

A. The following is a description of the plant of Peoria Gas & Electric Company as at September 1, 1900.

742 Retort house.

107 ft. 4″ x 42 ft. 2″—Brick building with gable roof. Walls 32 ft. above grade, 18″ thick for 12 feet and 12″ balance of height, with 16″ pilasters spaced 13 feet apart.

Ludowici tile roof, built onto steel frame work supported by seven steel trusses. 10 ft. clerestory entire length of building.

Foundations 6 feet below grade and laid on footing of concrete 12″ deep by 2 ft. 9″ wide.

Main floor laid with 9″ x 9″ x 2½″ tile.

Operating floor built upon nine hollow tile arches sprung from 15″ iron L-beams, one end of beam resting on wall and other end next to benches being carried on iron column. Operating floor covered with 9″ x 9″ x 2½″ tile, except 4 feet in front of benches, which is covered with cast iron plates.

Retort house contains seven Parker-Russell full depth regenerative benches of nine 16″ x 26″ x 9 feet deep retorts to each bench. Each retort provided with mouth piece with self sealing lid and connects to hydraulic main through 6″ standpipes, and bridge pipes provided with self sealing lids or covers.

Steel hydraulic main is 2 feet 7½″ deep by 2 feet 5″ wide, built of boiler plate and provided with four cast iron cleaning pockets fitted with covers bolted on, for each bench.

Hydraulic main is connected to condenser room with a 16″ cast iron pipe in which is placed a 16″ Western Gas Construction Company gate valve at hydraulic main. 16″ pipe is covered with magnesia cement.

A 9″ H. & M. angle thermometer is attached to 16″ pipe at hydraulic main.

Hydraulic main is provided with a 4″ tar take-off pipe and connected to both ends of main through 4″ valves.

4″ tar pipe runs entire length of benches, then drops to below floor and is carried to separator in condenser room.

Hydraulic main is also provided with ammonia take-off which discharges into a cast iron seal pot which is connected to 4″ tar pipe.

Benches are drafted through a main flue constructed entire length of benches and discharging into 90 feet by 48″ steel stack, built upon a brick foundation 12 feet in diameter at base by 13 feet. Foundation 6 feet deep.

Benches and hydraulic main are supplied with water through a 1¼″ water pipe laid under retort house floor. Same pipe also supplies water for quenching hot coke through five standpipes, each standpipe being provided with a stop cock set in the ground and fitted with a curb box brought 2 feet above the floor.

No. 5 and No. 6 benches and heating coil in elevator pit are supplied with steam through a 1″ pipe brought from condenser room. Heating coil contains 150 feet 1″ pipe.

For cleaning stopped standpipes, a platform of 2″ plank has been constructed the entire length of hydraulic main, in front of standpipes. Platform is carried on channel irons bolted across top of hydraulic main.

A 10″ diameter x 13 ft. 6″ travel, direct acting elevator with 6 ft. 6″ x 6 ft. 6″ platform is provided to elevate coal and coke to the operating floor. Elevator is connected to elevator pump and surge tank in boiler room with one 3″ and one 4″ pipe laid underneath boiler room floors.

A 1″ gas pipe is run along wall entire length of building on each floor, from which 8 gas jets on each floor are taken.

743

Boiler house.

38 ft. 5″ x 65 ft. Brick, with gable roof. Walls 20 ft. high, 18″ thick. Roof covered with Ludowici tile built onto steel frames supported by 1″ steel truss. Foundation 6 feet deep, on brick footing 2 feet wide. Floor paved with paving brick.

Pump pit 8 ft. x 10 ft. x 8 ft. deep, 12″ brick walls, wooden stairway and wooden hand rail.

Boiler house contains: two 66″ x 18 ft. tubular steel boilers with 36″ x 40″ domes, set in independent brick settings; connected together by one 6″ steam header from which is taken one 4″ pipe to supply heating apparatus and oxide elevator engine and one 4″ steam line to pump header; and also connected by one 2″ header, from which is taken steam supply to exhausters. All live steam piping and dome of boilers are covered with magnesia covering.

Two 5½″ x 3½″ x 6″ single acting boiler feed pumps connected so that either one or both may be worked.

One 8″ x 5″ x 10″ single acting pump, drawing water from river and set in pit 8 feet deep.

One 5¼" x 3½" x 6" single acting ammonia pump pumping crude liquor to ammonia still and scrubbers, set in pit.

One 10" x 6" x 12" single acting tar pump for loading tar into tank wagons or cars, set in pit.

One 4½" x 2¾" x 5" single acting ammonia pump for pumping concentrated liquor from storage tank.

One 8" x 5" x 10" single acting pump for elevator and fitted with 1½" pump governor and guage,—Fisher.

One 9½" x 8" x 10" crane air compressor used in connection with elevator apparatus.

One 12" x 19 foot stand pipe for elevator.

One 10 ft. 2" x 1 ft 4" x 1 ft. 5" open surge tank for elevator.

One 7 ft. 10" x 7 ft. 10" diameter steel tank supported on iron columns resting on boiler and fixing bench setting, used for water tank.

One fixing bench consisting of an 18" x 20 foot retort built into a setting containing a Parker-Russell semi-recuperator furnace and provided with two mouth pieces fitted with self sealing lids, and connected to 4 ft. x 4 ft. x 4 ft. deep hydraulic main by means of a 6" stand pipe and a bridge pipe fitted with self sealing lid. Hydraulic main is provided with a tar pot into which an overflow pipe from hydraulic main discharges.

Fixing bench is connected with outlet of purifier boxes with a line of 6" pipe, which also serves to connect vaporizer, and another line of 6" pipe leads from fixing bench hydraulic main to inlet of exhausters.

One vaporizer for vaporizing naphtha, consisting of a closed steel tank 3 ft. x 4 ft. x 6 ft. containing 11 steel shelves on which rest 11 coils of 1" steam pipe made up of 13 pipes to each coil, and each coil provided with two ½" valves so that steam may be cut off from any coil independently of the others.

6" connecting pipe is provided with three 6" valves, one in purifying house, one at vaporizer and one in condenser room.

One ammonia concentrator, made by Michigan ammonia works, of a capacity of 15,000 tons of coal per annum, consisting of a steel overhead tank supported on a timber frame work, a cast iron still on foundation on boiler room floor, a condenser consisting of a coil of 2" lead pipe contained in an open steel tank supported on
744 a timber frame work; an absorber consisting of a closed steel tank set on a brick foundation, and a second absorber set alongside of first absorber.

One No. 2 B Baragwanath plain tubular water heater with brass tubes.

One 3" exhaust header into which all pumps and exhausters discharge, each exhaust pipe from each piece of apparatus being provided with a valve. 3" pipe is also provided with 3" valves in order to by-pass feed heater.

One 3" discharge pipe from river pump to tank, provided with 3"

valve so that water may be diverted from tank and pumped directly into water lines leading to condenser room and retort house.

A 1½" connection provided with a float valve supplies the open elevator tank with water from the 3" discharge pipe from river pump.

A 3" connection provided with a 3" valve is taken from pipe leading from elevator stand pipe to supply water to condenser room, purifier house and retort house.

Water pipes are so arranged that either well pump located in condenser room or river pump, or elevator pump may supply water required in condenser, purifier and retort houses and meter room, or well water from well pump may be supplied to purifier and condenser houses and river water to retort house.

A guage board on which are placed guages for each of the following pieces of apparatus:—Exhauster, P. & A. air cooler, No. 1 condenser, No. 2 condenser, washer, No. 1 scrubber, No. 1 purifier and No. 2 purifier and No. 2 scrubber, 10 guages.

Guages consist of two glass tubes connected top and bottom with brass connecting pieces provided with stuffing boxes each guage provided with a brass connecting pipe fitted with a ⅜" gas cock. P. & A. air cooler, and condenser guages are 18", others are 14" guages.

One cast iron enameled washout water closet and flush tank.

One cupboard or wardrobe for fireman's clothes.

A line of 1" gas piping supplying 12 foot burners placed in boiler room.

Purifying and condenser house.

107 ft. 4" x 65 ft. 1", brick, gable roof. Walls 43 feet high to eaves, 22" thick for 25 ft. and 16" balance of height.

Condenser room divided off by partition wall built up to the roof, 16" thick for 25 feet and 12" balance of height. Foundation 3 ft. 6" deep. Roof covered with Ludowici tile (except two spaces over condenser room which are covered with glass tile to make sky lights), built onto steel frame work supported on six steel trusses, and partition walls.

Condenser room is provided with a frame stage and wood floor around condensing apparatus, and purifier house is also provided with a stage and floor around purifier boxes.

A wooden stairway leads from basement of condensign room to stage floor, another leads from stage floor in condenser room up to stage floor in purifier house, and a third stairway leads from purifier house floor to stage floor around boxes.

A plank runway is built from purifier house floor to driveway between store room and purifying house. Entire floor both in condenser room and purifying house is paved with paving brick.

745 Condenser room contains:—One preliminary air cooler 20 ft. 6" high by 5 feet diameter provided with two 12" valves and one 16" by-pass valve and one 9" H. & M. angle thermometer.

Air cooler is set on brick foundation 11 feet high, foundation is hollow, or of concentrue construction and space inside is connected through opening in wall of building and through area built outside and carried two feet above ground, to atmosphere.

Two P. H. and F. M. Roots No. 5 exhausters, with engines on same bed plate, set on brick foundations 3 feet below condenser room floor and 8 feet above floor. Each exhauster furnished with an automatic gas governor and steam valve and two 12″ gas valves with floor stands.

One 16″ automatic by-pass valve is provided for each exhauster.

Steam piping, both supply and exhaust, is provided with valves so that either one may be cut off independently of the other.

One P. & A. tar extractor set on brick foundation 3 feet below condenser room floor and 8 ft. 4″ above floor, and provided with two 12″ valves and one 16″ by-pass valve, all with floor stands and one differential guage and one 9″ H. & M. angle thermometer.

A seal pot to seal the drips from both exhauster and the P. & A. is set on floor below P. & A.

A tubular air condenser 20 ft. 6″ high by 5 ft. 6″ diameter set on brick foundation 3 ft. below condenser room floor and 8 feet above floor, and provided with two 12″ valves and one 16″ by-pass valve, all with floor stands and one 9″ H. & M. straight thermometer.

Foundation is of eccentric construction to permit air to be brought through arched opening left in base, and circulated through condenser.

Two tubular water condensers each 5 ft. 0″ by 20 ft. 6″ set upon brick foundation 3 feet below condenser room floor and 8 feet above floor, each condenser provided with two 12″ valves and both condensers provided with one 16″ by-pass valve with floor stand.

Each condenser is connected by separate drip pipe to seal pot set under washer. A 1¼″ ammonia cock in each drip pipe. Each condenser is also provided with two water connections so that either well or river water, or both, may be supplied to condensers. 1″ overflow pipes lead from each condenser to catch basin in boiler room. No. 2 condenser provided with two manholes, one top and one bottom, for cleaning.

One improved Chollar washer built of cast iron 5 ft. x 8 ft. x 3 ft. 6″ deep, set on foundation consisting of two brick piers 8 feet long extending from a point 3 feet below condenser room floor to a point 6 ft. 6″ above floor and provided with two 2″ valves and one 16″ by-pass valve, all with floor stands, and one differential guage and one 9″ H. & M. straight stem thermometer. Washer is also provided with device for varuing height of water in washer.

Two scrubbers 6 ft. diameter by 24 feet high, set upon foundation 3 feet below condenser room floor and 8 feet above floor, each scrubber provided with two 12″ valves and one 16″ by-pass scrubber, also provided with one 9″ H. & M. angle thermometer.

No. 1 scrubber is provided with two 2″ drip connections with a 2″ cock in each connection so that crude liquor may be run into

washer or else discharged into seal pot on condenser room floor under scrubbers.

No. 2 scrubber is provided with a 2″ drip pipe fitted with 2″ cock discharging into seal pot on condenser room floor.

746 Each scrubber is fitted with three layers of trays and seven 11″ x 17″ oval self sealing man holes, and removable sprinklers. The No. 1 scrubber is fitted with a double connection so that it may be supplied either with fresh water or crude liquor.

The tar and condensation from the various pieces of apparatus are gathered into three seal pots, one set below scrubbers and one set below washer and one set below P. & A. A separate line of 4″ cast iron pipe is run from these seal pots to a tar and ammonia separator set below the P. & A. This 4″ line is supported on brick piers. At the seal pot below the P. & A. an opening is left for a 3″ wrought iron header which is run along the entire length of the 16″ gas main to carry away the tar and condensation collecting in the 16″ gas main between the by-pass valves.

There are 8 syphone drips in the 16″ gas main each drip made of 1¼″ pipe, fitted with 1¼″ ammonia cock and a ½″ tee and steam connection provided with a ½″ steam valve, so that any drip or any portion of the 16″ gas main may be steamed at any time. These drips discharge into the 8″ wrought iron header through 3″ x 2″ tees and the drip header is also provided with a steam connection with a valve at each end so that any stoppage may be steamed out.

One tar and ammonia separator set on condenser room floor below P. & A., and consisting of steel tank 5 ft. diameter by 5 ft. 3″ deep, provided with a vertical steel partition dividing separator into two compartments, and also provided with one 4″ tar outlet and two 2½″ ammonia outlets, fitted with devices for varying the height of the liquor contained in the separator and also fitted with a clean out in the bottom of the side of the tank. A line of 4″ cast iron pipe to tar well and a line of 3″ wrought iron pipe to ammonia well, both pipes laid under condenser room floor take the tar and ammonia away from the separator.

The 16″ gas main is provided with specials now closed by blank flanges, so that the present apparatus, excepting the exhausters, may be duplicated at any time, thereby doubling the capacity of the condensing room. The 16″ gas main is supported on brick piers and all elbows are provided with cleanout holes fitted with self sealing covers.

One 4½″ x 2¾″ x 5″ single acting pump is set on condenser room floor and connected to well in yard by a line of 2″ pipe. This pump is fitted with a ½″ Fisher pump governor and pressure guage, and supplies well water to meter room and scrubbers and condensers.

Condenser room is heated by one coil of 450 feet of 1″ pipe built onto railing of stage floor and one coil of 384 feet of 1″ pipe built onto walls of condenser room.

A steam trap set into floor of condenser room takes care of the condensation from these coils as well as the condensation from coils

in purifying house and meter room. A line of 1¼″ pipe paralleling the 16″ gas main supplies steam to the drip seals for steaming out stoppages.

Condenser room is lighted at night by 14 incondescent electric lamps with wiring arranged so that lights on stage floor and lights on condenser room floor may be controlled independently of each other from switches placed in boiler room.

There is one *guage* board in condenser room provided with one *guage* connected to inlets of exhausters.

747 Connections are also provided for introducing air for revivifying oxide, through a meter set on condenser room wall near *guage* board.

Connection consisting of a line of ½″ pipe carried across condenser room and provided with ½″ cocks and seal, is also provided for introducing nap-tha into gas main at inlets of exhausters.

A 2″ connection fitted with a 2″ ammonia cock is also provided to return a portion of the gas from the outlet of the exhausters to the inlet.

Another 2″ connection fitted with 2″ ammonia cocks is run from the outlets of the purifiers to the inlets of the exhausters.

A line of 1″ pipe is run from the inlet of each piece of apparatus to the *guage* board in boiler room. All of the turns in these lines are made by means of 1″ tees with opening plugged.

A cupboard is provided for holding waste, packing, etc.

Purifying house contains:— Two 24 ft. x 24 ft. x 5 ft. deep purifying boxes constructed of cast iron plates bolted together and supported by eight 12″ x 31½ lbs. steel I-beams 36 ft. 6″ long, carried by walls of purifying house and 16 cast iron columns built upon 16 21″ x 21″ brick piers with 42″ x 42″ footings and extending from a point 3 ft. 6″ below purifier house floor to 3 feet above floor.

Each box is provided with one layer of reversible oak trays supported on seven 3″ x 5½ lbs. steel I-beams 24 feet long.

Each box is provided with four 12″ discharge openings, in bottom, each opening fitted with a hinged self sealing cover, or door, and above each opening is fitted a special trap tray provided with a handle so that the foul material may be dumped without digging down to the trays.

Each box is provided with a steel cover, 24 feet 6½″ x 24 ft. 6½″ deep at sides and 34″ deep in center of ends.

Each cover is provided with a 7″ ground joint blow off.

Each box is provided with a 10″ opening to which is connected a 10″ mercury sealed valve. A line of 10″ pipe from the valve leads to a 10″ steam jet exhauster and from the exhauster to the outside of purifying house. A 9″ H. & M. angle thermometer is placed in 10″ pipe.

Six 16″ valves with floor stands and connections so arranged that the gas may be conducted through both boxes tandem with either box first, either box independently of the other, or both boxes together.

Valves and piping are supported by hangers from I-beams carrying boxes, and tees are left for two additional boxes.

One power traveling crane carried by two steel I-beams supported by latticed steel columns resting on steel I-beams carrying boxes.

Crane built of two heavy latticed steel girders, connected at ends by lighter girders, traveling on four flanged and turned wheels. Two wheels carry gear wheels operated by pinions secured to a steel shaft which is in turn driven by chain sheave and hand chain.

Lifting apparatus consists of two cross heads, one with right hand screw and one with left hand screw, working upon a threaded shaft which is driven by a gear wheel set in the center of the length of the shaft and operated by a pinion secured to a second shaft which is in turn driven through a train of reducing gears by a
748 chain sheave and *and* hand chain. Four chains working over four sets of chain sheaves of two sheaves per set give the travel of the cross heads to the covers of the boxes.

One oxide elevator consisting of a receiving boot built under purifier house floor in a pit covered with removable floors, a bucket elevator incased in a wood case, and discharging into a head secured to a frame work built on to the tie bars of the purifier roof trusses. A galv. iron spout to carry material from head to either box, and provided with rope and blocks for lowering and raising spout.

A counter shaft with a link chain belt reaching from wall of purifier house to head shaft in center of house.

A 4 H. P. upright steam engine set on brick foundation on purifier house floor and connected to countershaft with a leather belt.

Purifier house is heated with two coils containing 288 ft. 1″ pipe and built onto sides of purifier boxes.

Two coils containing 500 feet of 1″ pipe built under boxes.

One coil of 1″ pipe containing 544 feet of 1″ pipe and built on purifier house wall.

A 1″ water pipe brings water from well pump in condenser room to a point in center of house near elevator, and from there to wall between purifier and condenser room where a hose connection and 100 feet of ½″ hose are placed above stage floor. 1″ water pipe is continued on to meter room.

A 4″ steam pipe covered with magnesia pipe covering brings steam to a point below stage floor at center of wall between purifier and condenser rooms, from which point steam is distributed to the heating apparatus in purifier house, storeroom and meter room. A 2″ steam line carried along walls of purifier house carries steam to oxide elevator engine and to storeroom. Another 2″ steam line carried along walls of purifier house, carries steam to steam jet exhauster, where a ½″ pipe is taken off and run to center of purifier house for heating water required in making oxide; and to meter room where a 1¼″ steam line is carried to naphtha house. All steam piping is covered with magnesia covering.

A 2″ gas pipe carried on walls of purifier house supplies gas

through a meter placed in meter room, to storeroom and boiler room, and retort house.

Two lines of 1″ pipe connect inlets of boxes to *guages* on board in boiler room. All bends and turns in these pipes are made with 1″ tees having one opening pluggett.

One line of 1″ pipe carried on walls of purifier house carries naphtha to vaporizer in boiler room from basement of meter room.

Meter and governor room.

28 ft. 3″ x 29 ft. 6″ brick, flat roof, walls 20 ft. above grade, 9″ thick. Foundation 8 feet below grade 12″ thick on brick footing 21″ wide. Roof carried on 2 x 8 joists supported in center by 10″ x 12″ trussed girder and covered with tin. Floor in Georgia pine and ceiling is also ceiled with Georgia pine. Five sliding sash windows. One wall built with blind arch so that meter may be taken through wall if necessary.

Building contains:—One 10 foot Maryland station meter set on brick foundation to bring base of meter above meter room floor.

Meter is fitted with two 16″ valves and one 16″ by-pass
749 valve with floor. stand and one 9″ H. & M. angle thermometer. Two 16″ valves and one 16″ by-pass valve, all with floor stands, for holder connections.

Connections covered with blank flanges for additional holder.

One 10″ Connelly automatic governor fitted with reducing flange connections so that larger governor may be set in future. Governor is provided with three 16″ valves with floor stands.

All specials in 16″ gas pipe are provided with cleanout openings closed with self sealing covers.

16″ gas piping and valves and fittings are all supported on 12″ x 12″ brick piers.

One *guage* board fitted with syphon *guage* to show pressure on mains.

One photometer room 9 ft. 10″ long by 4 ft. 10″ wide by 7 ft. 4″ high ceiled with Georgia pine matched, tongued and grooved ceiling.

One American Meter Company style B 60″ bar photometer.

One laboratory 9 ft. 9″ long by 4 ft. 4″ wide by 7 ft. 4″ high, ceiled with Georgia pine matched, tongued and grooved ceiling, fitted with 16″ x 24″ enameled steel sink set in work bench running along length of laboratory.

One Perry L. Hobbs ammonia testing outfit.

One American Meter Company ammonia test meter.

Laboratory is supplied with gas connections and with water from well pump in condenser room.

Meter room is heated by one 120 ft. iron pipe radiator.

Office, storeroom, and shop building.

103 ft. 1″ x 29 ft. 6″, brick walls, gable roof. End walls 19 ft. high at eaves at Grove Street end and 23 ft. 6″ high at rear end, height taken from foundation. Walls 12″ thick.

There are two 9″ partition walls, one 20 ft. high from foundation and one 22 ft. high from foundation.

There are four 9″ cross walls carrying floors, one 5 ft. high from foundation and one 8 ft. high from foundation. Foundations are 3 feet deep and 12″ walls have 2 ft. 5″ brick footings and 9″ walls have 1 ft. 9″ brick footings.

Roof covered with Ludowici tile built onto 1″ sheathing supported by 2″ x 6 rafters tied together by 2″ x 8″ joists.

Office is 27 ft. 6″ x 24 ft. 3″, plastered walls, floored, ceiled and finished with Georgia pine.

Office fitted with toilet room containing syphon jet water closet and overhead flush tank, enameled iron corner wash stand. One standing desk with cupboards and drawers. One hand rail from desk to wall. One drafting table. One black board. One roll top desk.

Storeroom is 27 ft. 6″ x 46 feet, floored with Georgia pine flooring laid over 2″ flooring spiked diagonally to joists.

Storeroom is partitioned off for meter repair shop by 7/8″ partition.

750 Meter shop contains three sets meter shelves 3 feet deep x 20 ft. long x 14 feet high, having a capacity for storing 600 meters. One set of shelves 3 feet deep by 20 feet long by 14 feet high containing 12 shelves. Two sliding ladders hung from overhead tracks in front of shelves. One work bench 10 feet long by 2 ft. 6″ wide. Top fitted and glued together and containing three drawers provided with Yale padlocks. One five foot meter prover. One gasser for testing meters for tightness. One 2 ft. 6″ x 3 foot table.

Storeroom contains:—One set fitting bins 20 feet long, 14 ft. high, 2 ft. 6″ deep containing 180 bins. One sliding ladder hung from overhead track in front of bins. One set fitting bins 3 ft. x 6 ft., containing 18 bins 15″ deep. Two sets fitting bins 8 ft. x 5 ft. 6″, containing 30 bins each 2 ft. deep.

One tool room consisting of a platform 12 feet by 19 ft. 6″, supported by storeroom wall on one side and four 2″ pipe posts on other side. Tool room provided with shelves for tools.

Fitting shop is 29 ft. 6″ x 27 ft. 6″ floored with Georgia pine flooring laid over 2″ flooring spiked diagonally to joists. Contains:—

One type C. Westinghouse alternating current 7½ H. P. motor, mounted on a platform made of 4″ x 4″ sticks framed together. One main shaft 2″ x 10 ft. hung in two shaft hangers. One 48″ x 5″ Dodge wood split pulley. One 12″ x 15″ face Dodge wood split pulley. 60 ft. 3″ double leather belting. 36 ft. 5″ double leather belting.

One No. 7 Jarecki pipe machine, with extra set of dies, extra head to hold dies, and countershaft. Pipe machine is set on steel pan 7 feet long by 3 ft. 6″ wide by 1″ deep.

Five fitter's benches, each bench consisting of a 2 ft. x 5 ft. white wood top, provided with two sliding drawers with Yale padlocks, bolted to two 2″ x 2″ x ¼″ angle iron standards 2 ft. 6″ high and a 2 ft. x 5″ x 2″ thick white wood shelf bolted to angle iron supports riveted to standards. Standards braced by two ½″ rods.

One work bench 2 ft. 6″ wide x 10 feet long. Top fitted and glued together and containing three drawers provided with Yale padlocks.

One white wood standing desk secured to wall.

One roll top desk for foreman.

One small cupboard for small drills, taps etc.

One 20″ x 30″ cast iron sink fitted with steam connection for heating water.

Building is piped for gas with 13 ell burner cocks in fitting shop, 12 ell burner cocks in storeroom and meter shop, one four burner polished brass fixture and 9 polished brass stiff brackets and independent cocks in office.

Building is heated with steam brought by a 2″ line from purifying house, by one iron pipe radiator of 120 square feet in office; one iron pipe radiator of 60 sq. ft. in office; four coils containing 585 feet of 1″ pipe in storeroom; one coil containing 203 feet of 1″ pipe in fitting shop.

Condensation is taken care of by steam trap located in basement of building.

Holder.

300,000 cu. ft. capacity. Consists of inner section of 83 ft. diameter by 28 ft. deep. Outer section of 85 ft. diameter by 28 ft. deep. Set in steel tank 87 ft. 6″ diameter by 29 ft. deep. Tank is set on concrete foundation 10 feet deep on river side and 2 feet deep on opposite side. Connections are 20″ and are set in a brick pit 15 feet wide by 18 feet by 6 ft. 3″ deep divided in center by 12″ partition walls. Walls are 12″ thick. 11 ft. 6″ of pit under holder
751 covered with railroad iron joists spaced 16″. Two 20″ drips set in pit. Connections outside of drip are 18″. Pit outside of holder is floored over with ⅞″ flooring.

Coal house No. 1.

Consists of an irregular shaped L frame building 166 ft. 8″ long on long side of ell, 84 ft. 5″ long on short or bottom side of ell, 118 ft. 6″ back again, 27 ft. in towards long side, 35 ft. 1″ up towards top of ell and 51 ft. across top of ell. Covered with a gravel roof carried on 61 8 x 8″ posts varying in length from 21 ft. 8″ for posts on sides of house to 23 ft. 4″ for posts in center of house. Posts rest on 22″ x 22″ cap stones built upon 2 ft. 6″ x 2 ft. 6″ brick piers 3 ft.

deep. House is sheathed with ⅞" siding from a point 10 ft. from ground to eaves.

Walls of coal storage room are constructed independently of coal house and consist of 3" plank walls 13 feet high held in place by 81 6" x 6" oak timbers 16 feet long, tied together at top by 166 1" rods about 16 ft. 6" long, and at bottom ends buried in trench 3 ft. deep.

10 lines of 6" x 8" timbers across coal shed and 4 lines of 6" x 8" timbers along length of coal shed, all timbers intersecting and bolted to posts carrying roof, with wrought iron angle pieces, act as braces.

Floor of coal house consists of 6" plank spiked to 4" x 4" oak sleepers. Roof is fitted with galv. iron hanging trough along each side and six galv. iron down spouts.

Coal shed is wired for two arc lamps with switch placed on post near scales. Coal house contains one 4 ft. x 6" miners' scale manufactured by H. N. Strait Mnfg. Co.

Coal house No. 2.

Is an L. shaped frame building, each side of ell is 128 ft. long and width of each side is 58 feet. Gravel roof supported on frame work carried by 35 12" x 12" posts varying in length from 19 ft. 6" for posts along sides to 23 ft. 6" for posts in center of ends of house; and 39 6" x 6" posts varying in length from 20 ft. 6" to 21 ft. 6". All posts are bolted to cast iron shoes built upon brick piers from 3 to 4 feet deep and are tied together across tops with 6 x 18" stringers spiked on and braced between posts with 6" x 6" braces bolted to posts with cast iron angles. Posts are also tied together by 98 1" rods about 16 ft. long.

Coal storage is provided for by 2" plank walls carried from floor to eaves on 12" x 12" posts, and on 35 additional 12" x 12" posts 11 feet long bolted to cast iron shoes built onto brick piers from 3 to 4 feet deep. Posts are held in place at top by a line of 12" x 12" *waling* extending entirely around coal house. *Waling* is bolted to each post. Entire floor is paved with paving brick.

Coal shed No. 2 is connected to retort house by means of a wooden trestle 160 feet long, consisting of a 3" plank floor spiked to four 4" x 10" stringers carried on framed 4" x 10" bents about 2 feet high and spaced approximately 10 feet apart.

Coke platform.

Consists of a 2" plank floor having an area of 8 ft. 10" x 59 ft. 9" at end of retort house and an area of 103 ft. 3" x 19 ft. 6" along Grove Street side of retort house. Platform is carried on 12" x 12" posts and is bolted securely to retort house wall. Platform has storage capacity for six car loads of coke. Side and ends of platform along side of retort house are sheathed with 1" boards to make storage shed under platform.

752 Coke storage in yard.

Is an irregular shaped area of 110 ft. long along No. 1 coal house, 50 feet along switch, 80 feet back to trestle, and 60 feet back along trestle to coal house; floored with 2″ plank spiked to 4″ x 4″ sleepers spaced 4 feet apart.

Tar well.

Consists of a brick cistern 28 ft. 4″ inside diameter and 14 ft. 6″ deep with walls 18″ thick, brick laid in cement mortar. Tar well is plastered with Portland cement and is covered over with a roof of ⅞″ tongued and grooved ceiling.

Ammonia well.

Consists of a brick cistern 14 ft. 8″ inside diameter and 13 ft. 9″ deep with walls 18″ thick, brick laid in cement mortar. Ammonia well is plastered with Portland cement and is covered with a roof of ⅞″ tongued and grooved ceiling.

Concentrated ammonia tank.

Consists of closed steel tank 10 ft. 3″ diameter by 7 ft. 2″ deep, set in brick cistern 17 feet inside diameter and 10 ft. 3″ deep. Brick laid in cement mortar, walls 12″ thick. Cistern is roofed over 4″ x 6″ plank set on edge and spiked together.

Naphtha storage.

Consists of a closed rectangular steel tank 14 ft. long by 8 ft. 11″ wide by 8 ft. 7″ deep, set in a brick cistern 17 ft. long by 11 ft. 11″ wide by 10 ft. 6″ deep with 12″ brick wall laid in cement mortar.

An elevated closed steel tank 4 ft. 1″ diameter by 8 ft. 10″ high, set in a tank room 10 ft. square by 7 ft. 2″ high raised 16 ft. 5″ above floor over lower tank in ground.

Framing supporting tank is sheathed with 1″ sheathing covered with building paper.

Building is also used as pump house and contains:—One 4½ x 2¾″ x 5″ single acting pump; one heating coil containing 100 feet of 1″ pipe.

Well.

Brick walls are 18″ thick. Is 5 ft. 2″ diameter by 80 ft. deep.

Drainage system.

Consists of 64 ft. of 30″ sewer laid from one end of city sewer and joining iron pipe under R. R. tracks; 94 feet of 20″ sewer; 230 ft. of 12″ sewer; 220 feet of 8″ sewer; 545 feet of 6″ sewer; 125 feet of 4″ sewer.

Depth of sewer runs from 7 feet at junction with 30″ sewer to 3 feet at west corner of retort house.

Six man-holes—one at junction of 30″ sewer 12 feet deep; one in boiler room 5 feet deep; one in passage between retort and purifier houses at upper end 5 feet deep; two in retort house 5 feet deep; one in yard near well 3 feet deep.

All man-holes excepting one at junction with 30″ sewer are provided with cast iron covers fitted in cast iron frames.

Yard connections.

One line of 6″ wrought iron pipe 200 feet long from river pump in boiler room to river.

One line of 4″ wrought pipe from tar well to tar pump, 50 feet long.

One line of 3″ pipe 180 feet long from tar pump to side track.

One line of 2″ pipe 150 feet long from well to well pump in condenser room.

One line of 2″ pipe 50 feet long from tar pump to end of boiler house to load tank wagons.

753–756 Yard connections—continued.

One line of 1½″ pipe 60 feet long from crude ammonia well to crude ammonia pump.

One line of 1½″ pipe 120 feet long from concentrated ammonia well to concentrated ammonia pump.

One line of 1½″ pipe 190 feet long from concentrated ammonia pump to switch to load tank wagons.

One line of 1¼″ steam pipe 115 feet long from meter room to naphtha house.

One line of 1″ pipe 115 feet long from meter room to naphtha house to carry naphtha to boiler room for vaporizer.

Pipe shed.

Consisting of frame building built onto storeroom building sheathed with ⅞″ tongued and grooved ceiling fitted with racks to hold 1½ car loads of pipe and having two pair double doors in front.

Scales.

One wagon scales, H. N. Strait Mnfg. Co. six ton, 8 ft. x 22 ft. platform set in brick pit with 18″ walls 4 ft. deep.

Track scales.

H. N. Strait Mnfg. Co. 80 ton 44 foot scales set in brick pit with walls 18″ thick and 5 feet deep.

Side tracks.

One P. & P. U. side track along coke platform.

One P. & P. U. side track across track scales, through No. 1 coal house, across yard and along No. 2 coal house.

One C. R. I. & P. side track along river side of property and No. 2 coal house.

Fencing.

280 feet (not including gates) of 8 ft. tight board fence carried on posts spaced 7 ft. 6″.

One wagon gate at scales 11 ft. 9″ wide x 7 ft. 4″ high. Gate posts carried up 15 ft. high and braced across tops.

One foot gate at scales 3 ft. 6″ x 7 ft. 4″.

One double gate over track at No. 1 coal house, gates 3 ft. 1″ x 7 ft. 11″.

One gate in fence between No. 1 and No. 2 coal houses. Gate 11 ft. 5″ x 8 ft. 2″ hung from posts carried up 15 feet and braced across tops.

One double gate across tracks at No. 2 coal house. Gates each 6 ft. 6½″ x 6 ft. 4½″.

One gate in fence along Rock Island track 7 ft. 7 ft. 4″ hung from posts carried up 15 feet and braced across tops.

757 3. What is the character of the soil in and through the streets and avenues of the city of Peoria in and through which the mains and pipe of the Peoria Gas & Electric Co. have been laid?

A. Below the bluff it is a sandy soil containing considerable gravel and in some few places the soil is what is commonly called "filled ground;" on the bluff there is some sandy clay and in other portions a hard dense clay.

4. From your investigation, knowledge and experience in the gas business, are you able to state what would be the fair market value of the gas plant, main system, services, pipes, meters, etc. of the Peoria Gas & Electric Co., in the city of Peoria on the first of September, 1900, to parties desiring to engage in the gas business, and assuming that such parties had a right to operate such plant?

A. Yes sir.

5. You may then state what would be the fair, market value of the gas plant, main system, services, meters, etc., meaning and intending in this question to cover the entire manufacturing and distributing plant of the Peoria Gas & Electric Co. in the city of Peoria, as the same stood and existed on the first of September 1900, to parties desiring to engage in the gas business, assuming such parties had the right to operate the plant?

Objected to by defendant as immaterial, incompetent and already gone over by the witness.

A. In my opinion the market value at the date mentioned and under the circumstances mentioned, was from $450,000. to $500,000.

6. Since the first part of your examination in this case, certain witnesses have been interrogated as to the size and capacity of the ammonia plant of the Peoria Gas & Electric Co. I will ask you to describe the size and capacity of the ammonia plant of complainant company in its gas plant in the city of Peoria, stating the
758 capacity of said ammonia plant and its fitness and utility as a part of the manufacturing plant of the Peoria Gas & Electric Co. as the same stood on the first of September, 1900, explaining in detail so far as you can.

A. The ammonia plant was rated by the manufacturer as a fifteen thousand ton plant; by that rating is meant a plant of sufficient size and capacity to properly concentrate the ammonia produced in the carbonization of 15,000 tons of coal per year, or the amount of ammonia produced from the manufacture of 500,000 cubic feet of gas per day. The plant, I believe is ample in size, to take care of the ammonia produced from the manufacture of 500,000 cubic feet of gas per day and is up to its rating in size and capacity.

7. Did you hear the testimony of J. M. Robb in this case with reference to the lengths of the different sizes of mains and services and the number of meters owned by the company?

A. Yes sir.

8. Were all the buildings, machinery and apparatus which you have listed and described, including the mains, services and meters, described in the testimony of J. M. Robb, a part of the plant of the Peoria Gas & Electric Co., on September 1, 1900?

Objected to by defendant as assuming facts that do not appear in the evidence of Mr. Robb; also as immaterial, incompetent and not tending to prove the issues in the case.

A. Yes sir.

9. Were they a necessary part of the said plant as the same stood on that date for the manufacture and distribution of gas in the city of Peoria?

Objected to by defendant same grounds.

A. Yes sir.

759 10. About what was the population of the city of Peoria, and territory adjacent thereto, about September 1, 1900?

Objected to by defendant as immaterial, incompetent and already answered by the witness in his former testimony.

A. The population of the city of Peoria proper, with the territory adjacent thereto, at the date mentioned, in my opinion, was between 60,000 and 65,000.

11. Describe the topography of the city of Peoria, the length, width and size of the city and the location of the plant of the Peoria Gas & Electric Company therein?

Objected to by defendant because the witness has already testified to the same matter.

The MASTER: I do not recall that this witness has been interrogated on that point and he may answer subject to the objection.

A. The city of Peoria is located on the westerly bank of the Illinois river and extends up and down the river for a distance of slightly more than 4 miles; the business portion, and a large proportion of the residence part of the city, is located upon a bench of land slightly higher than the average stage of the water in the river; this bench of land is parallel to the river and rises towards the northwest and falls slightly to the southwest; back from the river, at an average distance of approximately one mile, is a bluff which rises to a height of about 100 feet and a considerable proportion of the residences of the city lie on the sides and top of this bluff; the city extends back from the river an average distance of slightly more than 1½ miles. The plant of the Peoria Gas & Electric Company is located nearly midway in the length of the city at the foot of Persimmon street near the bank of the Illinois river.

12. Having in view the situation, location, size and to-
760 pography in the city of Peoria as you have described it, you may state what, in your opinion, is the location of the manufacturing plant of the Peoria Gas & Electric Co. with reference to the economic and convenient manufacture and distribution of gas over the territory you have described?

A. The plant is very well located for conveniently and economically manufacturing and distributing gas; for the manufacture of gas it is economically located by reason of the switching facilities, and for the distribution of gas, it is economically and conveniently located, because the greater portion of the territory to which gas is supplied is higher than the plant, and in as much as gas is lighter than air the gas rises naturally in the pipes and flows easily and rapidly to the consumers' meters.

13. At what price could ordinary laborers be employed per day during the period from May 1, 1900, to August 31, 1900?

A. At $1.50 per day.

14. Did that remain substantially the same after the last mentioned date?

A. Yes sir.

15. Was that the market price at which such labor could be employed during the period above named?

A. Yes sir, that was the market price of labor during that period.

16. What could stokers be employed at *from* the manufacture of gas in the city of Peoria during the period from May 1, 1900, to September 1, 1900?

A. Ordinary stokers could be employed at from $60. to $65. per month during the period mentioned.

17. What could a head stoker be employed for in the city of Peoria during the same period?

A. $70. per month.

761 18. What could common stokers be employed for in the manufacture of gas in the city of Peoria during the year from September 1, 1900, to September 1, 1901?

A. Ordinary stokers $60. and $65. per month, head stoker $70. per month.

19. Were the respective prices which you have just given for ordinary and head stokers in the different periods of time respectively the fair market value for such labor during the periods named?

A. Yes sir.

20. What could Youghiogheny coal for making gas be purchased for and delivered to the works of the company in the city of Peoria on or about September 1, 1900?

Objected to by defendant as immaterial and incompetent.

A. The market price of Youghiogheny coal delivered in Peoria on or about September 1, 1900, was from $3.00 to $3.20 per ton delivered on the side track of the company.

21. What was the ruling price for that quality and grade of coal during the period from May 1, 1900, to September 1 1900?

Objected to by defendant same grounds.

A. During all that period Youghiogheny coal was worth in the market delivered at the works of the company about $3. per ton. The price varied between $3.00 and $3.20 per ton.

22. What was the ruling market price for that character and grade of coal during the year immediately following September 1, 1900?

Objected to by defendant same grounds.

A. During the greater portion of the year the average price was about $3.10, the price ranging between $3.00 and $3.40 per ton delivered at the works of the company.

23. What was the local market, if any, for the residual
762 known as coke about the first day of September, 1900?

A. About $3.25 per ton.

24. State if that was the prevailing market price for coke during the entire period from May 1, 1900, to September 1, 1901,—if any change or changes occurred during that period, please state what they were.

Objected to by defendant as immaterial, incompetent and not tending to prove the issues in the case.

A. Yes sir, the price of $3.25 per ton was the average market price of coke during the period mentioned.

25. What was the ruling market price for the bi-product known as tar arising from the manufacture of gas during the period from May 1, 1900, to September 1, 1901?

Objected to by defendant same grounds.

A. The market price of tar varied between May 1, 1900, and September 1, 1901, between 5 cents per gallon and 3 cents per gallon.

26. What was the ruling price for the bi-product known as ammonia arising from the manufacture of gas during the same period?

Objected to by defendant same grounds.

A. The market price of ammonia during the period mentioned varied between 8 cents per pound and 5 cents a pound.

27. What was the ruling market price of cannel coal for the enriching of gas delivered at the plant of the Peoria Gas & Electric Co., in the city of Peoria, during the same period?

Objected to by defendant same grounds.

A. From $3.00 per ton to $4.75 per ton.

28. What was the average market price of gas oil for making water gas in 1899 and 1900 delivered in the city of Peoria?

Objected to by defendant same grounds.

A. From $3\frac{3}{4}$ cents to $3\frac{8}{16}$ cents per gallon.

29. What was the market price of coke for making water
763 gas delivered at the plant of the Peoria Gas & Electric Co. in the city of Peoria in 1899 and 1900?

Objected to by defendant same grounds.

A. From $4.50 to $5.00 per ton.

30. What was the market price, delivered at the plant of the Peoria Gas & Electric Co. in the city of Peoria, of coal for boiler fuel in 1899 and 1900?

Objected to by defendant same grounds.

A. It ranged between $1.15 and $1.55 per ton.

31. What was the market price or value of breeze during the years 1899 and 1900 at the plant of the Peoria Gas & Electric Co.?

Objected to by defendant same grounds.

A. About $1.00 per ton.

32. What was the market price for retort carbon at the plant of the Peoria Gas & Electric Co. in the city of Peoria during the years 1899 and 1900?

Objected to by defendant same grounds.

A. From $10 to $12.50 per ton.

33. In your previous examination in this case, you stated that the value of residuals arising from the manufacture of gas from September 1, 1900, to August 31, 1901, was $20,372.91. Please state how you fixed the value of the residuals arising during that period from the manufacture of gas, that is whether it was the fair market

value of the residuals arising from the manufacture of gas during that period, or some arbitrary value placed on it by you?

A. The residuals were valued at the fair market value and the price at which we were able to sell them during the period mentioned.

34. Do those correspond approximately to the market value you have given in your testimony?

A. Yes sir.

764 35. Did you credit the actual cost of the manufacture and delivery of gas to consumers during the period from September 1, 1900, to August 31, 1901, with the value of the residuals as arbitrarily fixed by you, or was it the market value of the residuals arising during that period as shown upon your statement marked Exhibits "2," "3," "5," and "6" as to the amount and cost of gas manufactured by the Peoria Gas & Electric Co.?

A. The residuals are credited in the statements referred to at the average price which we realized from the sale of them, although in the case of both tar and ammonia the prices at which we sold them were somewhat above the market prices existing at that time by reason of the fact that we had contracts for the sale of them made when the market price was higher.

36. In your previous examination you stated that the value of the residuals arising from the manufacture of gas from May 1, 1900, to September 1, 1900, was $21,041, how was that value determined, by some arbitrary value fixed by you, or was it the fair market value of the residuals from time to time arising from the manufacture of gas during that period?

A. The residuals during the period mentioned were credited at the average price at which they were sold, which was, as to the residuals, tar and ammonia, somewhat above the market price existing at that time.

37. In your answer to cross interrogatory No. 31, of your last examination by Mr. Mansfield, you furnished to the reporter statements known as operating statements for a period, month by month, beginning with May 1900, and ending with August 1901, in which you give certain statements as to the value of residuals made. You may state whether the value of the residuals as they appear in the statements just referred to, are the fair market value of the said residual products except as to those instances with reference

765 to which you have testified, that the prices actually received by you were more than the prevailing market prices owing to the existence of contracts with reference thereto?

A. The values as stated are the fair market values of the residuals made excepting as to the tar and ammonia which, during the greater portion of the time, were less than the amount stated in the open market; they were, however, credited at the figures given in the statement because of the existence of contracts which enabled us to sell them at the prices stated in the statements.

38. Has the Peoria Gas & Electric Company a gas stove department connected with its gas business in the city of Peoria?

A. Yes sir.

39. How long has it had such a department?

A. Since the commencement of its gas business in the spring of 1900.

40. Has the Peoria Gas & Electric Co. a soliciting and advertising department connected with its gas business in the city of Peoria?

A. Yes sir.

41. Is it necessary to maintain a department of that character in the gas business at the present time, if so, why?

A. Yes sir, in my opinion, it is necessary to maintain such a department to promote the sale of gas and increase and enlarge the market for the product which the company manufactures.

42. Does such a department add to the cost of the delivery of gas, if so, explain how?

Objected to by defendant as immaterial, incompetent and not tending to prove the issues in the case.

A. The expenses of advertising and soliciting necessarily increases the cost of delivering gas by reason of the cost of advertising
766 and soliciting being added to the other costs of the distribution department.

43. In what respect generally has the cost of the delivery of gas increased in the last 15 years, if it has increased?

A. Gas companies in the last 15 years have become much more attentive to the wants and troubles of their customers and it is now the general practice to employ complaint men to look after customers' complaints, both as to the quality of gas, the pressure, the condition of burners, the condition of stoves and all the appliances in which gas is used; much more attention is paid to leaks in the mains, services and meters and in the house piping of consumers than was the case 15 years ago; the business is now recognized as commercial business, the company selling at retail a standard product and every effort is made to get new customers and extend the uses of gas by old customers; all of these expenses necessarily increase the cost of the distribution of gas.

44. What facts and circumstances have brought about these changes in the methods of handling the business?

Objected to as immaterial, incompetent and already gone over by the witness in his former testimony.

A. Principally the competition of other illuminating and heating agents; the introduction of electricity into general use about 15 years ago threatened the stability of the gas business and induced the managers of gas companies to adopt an aggressive policy and endeavor to meet the competition; about the same time the burners used with coal oil were greatly improved and this also stimulated gas managers to start efforts to dispose of their product; the gas

stove at the same time was considerably improved and it was discovered that gas could be succes-fully used for all family purposes in connection with cooking and for heating in gas grates and fire places.

45. Turning now from considerations connected principally
767 with the distribution. You testified in the early part of your examination in chief with reference to certain changes and improvements in the machinery, apparatus and process of manufacture. What effect, if any, have these changes and improvements had upon the cost of the manufacture of gas?—In what way and to what extent?

Objected to by defendant as immaterial, incompetent and having already been gone over by the witness.

A. The improvements to which I referred were generally in connection with an increase of the capacity of benches, larger retorts and better furnaces, and in connection with the better condensation and purification of gas. The changes in the furnaces and the character of the retorts in the benches have permitted of a marked increase in the amount of gas given off per ton or pound of coal carbonized, and a considerable reduction in the amount of coke required to heat the furnaces. The improvement in the yield of gas has been to increase the average yield from about 8,000 feet per ton of coal to 10,000 feet per ton of coal. The improvement in the furnaces has resulted in changing the amount of coke required to heat the furnaces from 50 to 60 per cent. or more of the coke made, which was common 12 or 15 years ago, to 25 and 30 per cent. of the coke made, which is the common practice now. The larger benches permits of a larger amount of gas to be made in the works per man per day. The better methods of condensation result in a higher illuminating value to the gas; formerly it was extremely rare to find a plant which could make 16 candle coal gas or better without enrichment; it is not unusual now to find plants making 17, 17½ and even 18 candle coal gas without enrichment. The effect of the change in the methods of purification has been to reduce the cost of purification. All of the changes to which I have referred have resulted, either in an increased yield and lower cost of manufacture and greater amount of gas made per man, or the production
768 of more residuals per ton of coal carbonized.

46. In the construction of the manufacturing plant of the Peoria Gas & Electric Co., were all of these improvements, with reference to which you have testified, embodied, so far as the same could be embodied, in a plant of that size and capacity?

A. Yes sir.

47. Was the gas coal and other material entering into the cost of the manufacture of gas as manufactured by the Peoria Gas & Electric Co., as testified to by you, purchased from time to time by the said company at the fair market price of all such material entering into the cost of the manufacturing of such gas?

Objected to by defendant as immaterial, incompetent, and not tending to prove the issues in the case.

A. The cannel coal used in enriching was purchased from time to time at the lowest market price obtainable in this market; the Youghiogheny coal used from the commencement of the company's operations in the spring or in April, 1900, up to September 1, 1901, was purchased in the fall of 1899 at a price considerably below the market price which obtained thereafter during the whole of the period mentioned; this coal was bought in one order at less than the price which has subsequently prevailed.

48. Was the labor employed by you in the manufacture of gas at the plant of the Peoria Gas & Electric Co. purchased by you at the fair market price of such labor for the respective times during which it was employed?

A. Yes sir.

48. In your previous examination you mentioned a number of hazards to the investor in considering whether he would invest in the business of the manufacture and sale of artificial gas. I will ask you to state if the action of legislatures and city councils are, in your judgment, a hazard to the management or investment
769 in such a business and in answering this question I will ask you to illustrate the dangers and hazards from the action of legislative bodies and municipal councils so far as you can from your own experience.

Objected to by defendant as immaterial, incompetent, not tending to prove the issues in the case and because already testified to by the witness.

The MASTER: I don't think that is a material inquiry. I think this about it, that when a corporation, company or individual engages in this business, it does it knowing those contingencies may arise at any time. I think it is a very different thing from a hazard which would naturally arise from competition such as has been detailed.

Mr. ABBOTT: Will the master hold that a wholesale grocery dealing both in fuel and gunpowder would not be entitled to charge more in proportion on the gunpowder than on fuel.

The MASTER: The master will not decide anything now; I simply state my present impression on that line of inquiry.

Mr. IRWIN: I think it material and when the authorities are produced I think the master will agree with me.

The MASTER: The witness may answer subject to the objection.

A. In my judgment the hazard of the gas business is greatly increased by the action, often ill-advised and hastily considered, of legislatures and city councils. The business is subject to the imposition of restrictive conditions which, in my opinion, are not often in the interest of either the gas company or the public. In this connection I will refer to an ordinance which was vetoed not long since

by the mayor of the city of Peoria, which ordinance permitted the gas company to lay mains and supply customers in the south
770 western portion of the city and which, had it become a law, would have added to the consumption of gas and increased the gross earnings of the company; the ordinance, which forms the basis of this suit, is another illustration in point, not only with reference to the price, but with reference to the provision relating to the furnishing of gas of a uniform 18 candle power to be measured at the point of consumption.

49. Is it not a fact that since the ordinance, under which the Peoria Gas & Electric Co. is operating was passed, an ordinance was adopted granting to other parties the right to operate a gas plant in this city which would have come into direct competition with the Peoria Gas & Electric Co., that is, if it should appear by other proof that such an ordinance was passed, would that be a further illustration of the dangers of the possible action of municipal councils as a hazard of the gas business in your opinion as a gas expert?

Objected to by defendant as incompetent, immaterial and frivolous and not tending to prove the issues in this case.

A. Yes sir, there has been such an ordinance pas*t* and a license was granted to one Charles V. Newman, and the worst effect of the granting of such ordinance is to arouse discontent in the minds of consumers and to create an impression that by waiting possibly they can get gas at a lower price which retards the development of the business.

50. Do any other hazards of the business occur to you now aside from what you may have testified to before, such as might result from the changing in grades in streets of a growing city, or a change in the method or process of lighting, or a change in the manner and distribution of public lighting and competition of other companies therefor or any others which occur to you at this time, if so, state what they are.

771 Objected to by defendant as immaterial, incompetent, not tending to prove the issues in this case and because it has already been gone over by the witness.

A. Changes of grades which frequently take place in a growing city may result in one or two conditions which are expensive and hazardous; the change of grade may establish a new grade so much above the old grade as to make the gas pipe inaccessible and require them to be raised and replaced in new filled ground; the result is that in the settlement of the ground the joints become leaky and not infrequently the pipes break; on the other hand a change of grade may place the pipes either above the existing grade or so near to it as to require them to be lowered which is expensive and in many instances results in a permanent expense by reason of requiring a re-grading or re-enlignment of the main; quite frequently and especially where pipes are less than 6 inches in size, it is cheaper to

cut off the old main and abandon it than to take it out of the ground, although, if it were left undisturbed, it would have a number of years of life still in it; improved changes in methods of lighting are being brought about from year to year; these changes to which I refer apply particularly to burners better adapted for the use of coal oil and to more economical lamps and apparatus for electricity; these changes are constantly going on and in my opinion constitute a serious hazard to the gas business.

51. What changes, if any, are now going on, or have been going on since the year 1899, in the manner and process of public lighting?

Objected to by defendants same ground as before.

A. A great many cities throughout the country are returning to the use of gas for public lighting, especially in connection with the Welsbach or incandescent mantel light; the use of gas for
772 public lighting in connection with the incandescent mantel lamp is becoming general.

52. Where gas is used for public lighting on short term contracts between the municipalities and the gas companies and at the expiration of those contracts competition is asked for with reference to further contract, either by bids or otherwise, to what extent if at all, and in what manner do such facts constitute a hazard to the gas business?

Objected to by defendant same grounds.

A. It constitutes a hazard to the gas business where competition is asked for and especially where bids are received from people then having no gas plant and no means of supplying gas to fill such contracts except through the construction of a new plant; the street lighting, if large enough in amount, operates as an inducement to people to apply for a franchise or license and especially if the contract is for the entire public lighting, or a large portion of it.

53. Under the circumstances noted in the last interrogatory, you may state if it is an uncommon thing for bids to be made by parties who have not at the time a gas plant in existence?

Objected to by defendant same grounds as before.

A. I think it is not uncommon for people to bid on gas street lighting where they have no plant, but rely upon getting a franchise and building a plant after the contract is awarded to them.

54. Those facts, as I understand you, constitute a hazard to the company already doing the business?

Ans. Yes sir.

55. Several witnesses in this case have testified with regard to certain elements and forces which tend to depreciate a gas plant. In what manner, from your experience and observation as a gas man, does good business policy require that this depreciation of a plant from year to year should be met?

773 Objected to by defendant same grounds as before.

A. The proper method of taking care of depreciation is by setting aside each year from the earnings of the company a sum sufficient to meet the annual depreciation. As a matter of practice, the gas company so setting aside such a sum should reinvest this money in extensions and replacements to the plant and property of the company and the money so spent would properly be charged to the proper construction account; at the end of the year when the books are closed the construction account should be credited with the amount of the depreciation and a depreciation account should be opened and the amount so credited to construction should be charged to depreciation and then closed out into the profit and loss account of the company at the close of the year; in this manner, the actual value of the assets of the company corresponds to the book value.

56. In your judgment, from your experience and observation in the gas business, should the method stated in your last answer be followed, and should it be followed before any estimate could be made of the earnings or profits of the company?

A. Their entries should be made before any dividend is declared or any sum set aside for dividend purposes and before the statement of the profits of the business for the current year is made up.

57. Explain a little further what you mean by its being originally charged to construction account and carried there until the books are closed at the end of that year, having regard to the theory, if it be a proper theory, that the books of the company should show, so far as books can, the real history of the business.

A. The books of every company should be an accurate history of the transactions of that company. The reason for charging to construction account the moneys expended in extensions and replacements is that a proper record of such extensions and replace-

774 ments may be made upon the general books of the company; at the same time, with the close of each fiscal year, those items, which are properly charg-able against the profit and loss account, or in other words, against the earnings of the business, should be taken into account and the necessary entries made on the books so that each year's business stands by itself.

58. In your previous examination in this case, and in the examination of some other witnesses, reference has been made to Brown's Directory as a source from which certain information is procured as to the prices charged for gas in cities in the United States of 50,000 inhabitants and upwards, as shown upon Exhibit "7." What is Brown's Directory?

Objected to by defendant as immaterial, incompetent and not tending to prove the issues in this case.

A. Brown's Directory is a publication issued annually by E. C.

rown of New York ; it is a directory of all the gas companies of the nited States and Canada ; it shows, among other things, the prices harged—Interrupted.

(The MASTER :)

59. I don't think it would be competent for you, Mr. Little, to ate what it shows ; the question don't call for the contents of the irectory.

(Mr. ABBOTT :)

59. Let your answer relate to a description of it as to whether r not it is a standard and reliable work and so considered among ne gas fraternity ?

Objected to by defendant same grounds.

A. It is a standard work which has been issued for a number of ears and is generally regarded among gas men as the most authori- ative publication of the sort in America and is considered to be eliable and accurate.

60. Do you know what the population of Peoria was in 1880?

75 A. It was 29,259 as shown by the census of that year.

61. State what it was, if you know in 1890 ?

A. It was 41,024.

62. State what the population of the city of Peoria proper was in he year 1900 ?

A. In 1900 the population of the city of Peoria proper was 56,100.

63. The difference between that and the population as given in our evidence in relation to the population of the city of Peoria and erritory adjacent thereto is, I assume, to — the additions of territory hich has been taken into the city since the census of 1900—is that orrect ?

A. Yes sir.

64. What additions have been made to the city of Peoria since he census of 1900 ?

A. The villages of North Peoria and South Peoria have been an- nexed to the city and, if I remember correctly, also the village or district known as West Peoria.

65. What other village corporation is immediately adjacent to he city of Peoria ?

A. The village of Averyville is located at the northerly end of he city and immediately joins the northerly city limits of the city f Peoria.

66. Is it physically a continuation of the city ?

A. Yes sir, the boundary between the two is purely an artificial ne.

Cross interrogatories by Mr. MANSFIELD:

1. In your direct examination you testified that the fair cash market value of the plant of the Peoria Gas & Electric Co.
776 was worth between $450,000. and $500,000., what did you include in that estimate of the fair cash market value?

A. The entire plant and main system, services, meters and records of the company.

2. What did you estimate the fair cash market value of the Peoria Gas & Electric Co. to be in making up your estimate of the fair cash market value of the plant of the Peoria Gas & Electric Co., as testified to by you in your direct examination?

Objected to by complainant as incompetent, immaterial, and not cross examination for the reason that the witness was asked on direct examination to state the market value only of the property considered as an entirety.

The MASTER: I think it competent for counsel on cross examination to ascertain what the witness estimated the different parts at in making up his estimate of the value of the plant.

A. In my direct examination the question as to what I considered to be the fair value of the property was further qualified by the statement that it was limited to people who had the right to use it as a gas plant. In other words, had a license to operate a gas plant in the city of Peoria and my estimate of the market value of the property at that date is based upon the property as a whole and I consider it to be worth more than it cost in that connection using it and considering it as an entirety.

3. Now will you please answer my question?

A. I did not make any estimate of the mains independent from the remainder of the plant but considered the entire plant to be worth something more than it cost.

4. What did you add to the original cost of the mains for the reason you took into consideration that the Peoria Gas & Electric Co. had a right or license from the city of Peoria to manufacture and distribute gas in said city?

777 A. I did not estimate it in that way; I estimated what I considered to be its market value to someone aside from the Peoria Gas & Electric Company who had a license or franchise to do business in the city.

5. Did you estimate those mains to be of more value than you testified they cost in your former direct examination in making up your estimate as to the fair cash market value of the plant?

Objected to by complainant as incompetent, immaterial, not cross-examination and not directed to any theory of the market value of the plant as brought out on direct examination.

The MASTER: I think the witness has already stated he did not make any separate estimate as to the value of any separate portion

e plant but that his estimate was based upon the plant as an
ety coupled with a license to do busines.
. IRWIN: Yes sir, the mains would not be worth anything un-
hey could be used in connection with the plant.
e MASTER: The witness may answer subject to the objection.

I did not take the mains separately into consideration but
ated that the entire plant was worth more than it cost under
onditions named.
What are the various parts of the manufacturing plant and
ibuting system of the Peoria Gas & Electric Co. that you took
consideration when you made up your estimate as to the fair,
market value of the plant?
I took into consideration all of the plant as described by me
y testimony in this case as a complete gas plant.
State what were those various parts you took into considera-

I took into consideration the real estate upon which the plant
is located, which was described by me in my testimony, in-
cluding the joining or near-by real estate; the retort house
with the seven benches of 9's therein contained and other
ratus as described by me; the boiler house and its contents as
ibed; the purifying and condensing house with its contents;
neter room with its contents; the office storage room and shop
its contents; the storage holder, the yard, gas, steam, water
sewer piping, the complete main system of the company, the
ces and meters and all of the records of the business.
Is that all you took into consideration?
And any other property which the company might own. I
by that, I took into consideration all of the property belonging
e gas plant of the Peoria Gas & Electric Co.
In making up the fair, cash market value of the plant of the
ia Gas & Electric Company, as testified to by you, at what value
ou place the office of the Peoria Gas & Electric Company, as
ed upon its ground at the foot of Persimmon street in the city
oria?

jected to by complainant as immaterial, irrelevant, not cross
ination and asking the witness to make an estimate of a char-
which he has several times stated he did not make or under-
to make.
e MASTER: I think counsel has a right to ascertain what was
idered by the witness in arriving at the estimate he made. The
ess may answer subject to the objection.

I did not make any separate estimate of the value of the office
ding referred to; I considered it as a necessary part of the
e plant all taken together.
. How long has it been since this plant was constructed in the
of Peoria?

A. The construction of the main plant was completed in
779 the year 1900.

11. In what part of the year 1900?

A. The main body of the plant was completed in the early part of 1900?

12. Was there any depreciation in that plant from May 1, 1900, up to September 1, 1901?

A. Yes sir.

13. Was the fair, cash market value of that plant on September 1, 1901, as large as testified to by you upon your direct examination?

Objected to by complainant as immaterial and assuming a statement the witness never made.

A. I do not remember of testifying on my direct examination to its market value on September 1, 1901.

14. Was the fair cash market value of the plant on September 1, 1901, as much as you testified the fair cash market value of the plant was at the time you testified it was worth from $450,000. to $500,000.?

A. Under the conditions named in the direct interrogatory, viz:—That parties wanted it who desired to engage in the gas business and had a license to operate a gas plant in the city of Peoria, I believe the market value of the plant on September 1, 1901, was as great as on September 1, 1900, provided the ordinance, which forms the basis of this suit, was not then a valid ordinance.

15. Then in the first year of the operation of the plant, the plant instead of depreciation increased in value in your estimation from $434,000. to between $450,000. and $500,000.?

Objected to by complainant as a statement of counsel only and not repeating what the witness said.

The Master: The question is argumentative, Mr. Mansfield.

780 16. Did not the plant then increase in its selling value between May 1, 1900, and September 1, 1901?

Objected to by complainant for the same reason last stated and because it does not state the proper time at which the witness estimated the market value of the plant.

The Master: The witness may answer subject to the objection.

A. I believe that immediately upon the completion of the plant it became worth more than it cost under the conditions named in the direct interrogatory.

17. In calculating the amount of depreciation which you say a plant would suffer yearly, would you calculate that depreciation upon the fair market value of the plant or would you calculate it upon the actual cost value of the plant?

A. I would calculate the depreciation, if I were operating the plant, on the cost of the property unless I had reason to believe that the cost varied very materially from its value.

18. What do you mean when you say you would estimate that preciation upon the cost of the plant?

A. Upon the cost as shown by the books and records of the company.

19. What do you include, if anything, in the cost of a plant other an the labor and materials which enters into the cost of the manufacturing plant and the distributing system?

A. I include in the cost all of the organization expenses, the preparation of the necessary and desirable books and records, the attorneys' fees, legal expenses of incorporating the company, and all e expenses incident to testing and putting the plant in operation well as the cost of labor and materials in the construction of the arious parts of the plant.

20. What percentage did you allow to cover such depreciation.

81 A. I testified in my examination in chief that in my opinion the total average depreciation amounted to 6½ per cent. er annum on the cost of the property exclusive of real estate.

21. You stated in your direct examination that one of the hazards f the business of the manufacture of gas was the ill-advised action f city councils and illustrated that hazard by citing the fact that he city of Peoria subsequent to the time of the granting of the license or franchise to the Peoria Gas & Electric Co. granted a similar license to a man named Newman. Explain what effect or what money was expended by the Peoria Gas & Electric Co. on account f the fact that this ordinance or franchise was granted to Newman?

Objected to by complainant as immaterial and irrelevant.

A. The only money spent by the Peoria Gas & Electric Co. in hat connection was to procure a copy of the Newman ordinance, or which I believe we paid $1.60, but that was not the effect of the ranting of that ordinance to which I referred in speaking of the azard. All such ordinances, and I believe it was understood by very person in the city of Peoria, that Mr. Newman never intended o build a gas plant. All such ordinances have the effect of prejudicing the minds of the customers of the Peoria Gas & Electric Co. gainst that company because they were charging more for gas han that ordinance provided and, having the sanction of the city ouncil it was assumed by the public that the charges of the Peoria as & Electric Co. were more than were necessary to pay a fair return on the money actually invested. The tendency of all such egislation is to do no good to the public but it discourages the use f gas and works an injury to the company doing business in the ommunity.

22. For what purpose did Mr. Newman, in your opinion, 82 obtain the license from the city council of the city of Peoria?

A. In my opinion he did it for the purpose of making rouble for the Peoria Gas & Electric Co. because he was a dis-

charged employé and had no idea whatever of ever building or operating a gas plant.

23. Then you believe Mr. Newman went to the expense of soliciting throughout the city merely for the purpose of getting even with the Peoria Gas & Electric Company, having no idea in his own mind that he would ever install a plant in the city of Peoria?

A. I don't think that Mr. Newman ever went to any expense in soliciting or procuring the employment of solicitors and I think he had no idea in his mind than one of revenge for being discharged. I don't believe he ever expected to build a gas plant.

24. What revenge could Mr. Newman have obtained if he did not intend to build a gas plant in the city of Peoria?

Objected to by complainant as incompetent, immaterial and simply calling for the opinion of the witness.

The MASTER: I think it incompetent and immaterial and calling for the opinion of the witness but he may answer the question if he desires.

A. Well, I will not answer it then. I will drop the subject

24. In estimating the fair cash market value of the plant of the Peoria Gas & Electric Co., did you estimate the fair, cash market value of the mains of said company at a value in excess of the actual cost of the materials and labor that entered into the laying of those mains in the streets of the city of Peoria?

Objected to by complainant because it has been answered already at least three times.

The MASTER: I think that is right, Mr. Mansfield, but if you want him to answer it again he may do so subject to the objection.

783 A. I did not make any separate estimate of the mains apart from the entire plant.

25. In making up your estimate of the fair cash market value of the plant of the Peoria Gas & Electric Company, did you add anything to the value of each and every part of the manufacturing plant as well as the distributing system of the Peoria Gas & Electric Company?

Objected to by complainant as already asked and answered several times.

The MASTER: Well, let him answer again.

A. I did not take the parts of the plant separately and independently. I estimated that the plant as a whole was worth more than it cost under the conditions named in the direct interrogatory asked me.

26. Did you not testify before the board of review of the county of Peoria on August 29, 1901, after having first been duly sworn, in reply to a question asked you by Mr. Jack with regard to the

ue of the four inch mains that they were worth about 30 cents a
t as laid in the streets?

Objected to by complainant as incompetent, immaterial, not
per cross examination, and assuming that the witnesss was
rn and testified.

The MASTER: The witness has fixed the fair cash market value
he plant at a certain time. Now these 4 inch mains constitute a
ge proportion of the distributing mains of the complainant com-
y and why is it not competent for counsel on cross examination
show that the witness in a former statement made statements
regard to the value of what constitutes a large proportion of
distributing mains.

Mr. ABBOTT: For the reason that the witness has four or
five times stated that he estimated the market value of the
plant as a whole and did not take into consideration any par-
lar part of the plant except so far as the whole was an entirety.

The MASTER: The master cannot assume how the witness will
wer this question; I think it competent as tending to ascertain
method the witness used in arriving at the fair cash market
ue as stated by him.

A. My recollection is that I was not sworn and did not testify
ore the board of review. The statement I made before the board
review, as I now remember it, was confined wholly to the value
the mains as laid in the streets disassociated from the license to
business and considered merely as so much cast iron pipe lying in
streets with reference to the mains of all sizes.

Q. If you were not sworn before the board of review did you not
answer to the question, "Could you arrive at an estimate as to
at 80,852 feet of 4 inch mains were worth," state, "About 30
ts a foot now laid in the street"?

Objected to by complainant same grounds as before.

A. I don't remember. The statement made by me before the
rd of review in connection with the value of all of the property
ether 4 inch main, 6 inch, 8 inch, or other sizes, was wholly based
on what I considered to be the value of the pipes disassociated
m the license to do business and considered only as cast iron
e laid in the streets.

Q. Did you not testify before the board of review of Peoria county,
, on the 29th day of August, 1901, after being first duly sworn,
answer to the question, "How many miles of main have you,"
you not testify, "26 55/100 miles devided up into 1758 feet
of 16 inch main, 20,768 feet of 12 inch main, 3482 feet of
10 inch main, 20,224 feet of 8 inch main, 12,874 feet of 6 inch
main, 80,852 feet of 4 inch main, and 260 feet of 2 inch main,
king a total of 140,223 feet?

Objected to by complainant same grounds as before.

A. I don't remember that I was sworn when appearing before the board of review and I don't remember that the figures given are the exact figures that I stated at that time. I gave a list which I believe was then substantially accurate, of the mains owned by the company and I think it approximated the figures you have stated.

29. If you were not sworn before the board of review at that time and place, did you not make the statement as contained in the last interrogatory?

Objected to by complainant same grounds.

A. I don't remember that I stated the lengths of the various sized pipe exactly in the figures you have given.

30. Did you not before the board of review of the county of Peoria, Ill., at the court house in the city of Peoria, on August 29, 1901, after being duly sworn, in response to the question, "Have you made an estimate as to the value of each of those" testify, "We did not make it up in that way; in making up the schedule, we went at it in a different way from that; we took the price of the pipe in the street; the pipe delivered cost us all the way from $15. to as high as $25. a ton and we figured the tonnage of the pipe and figured it on the basis of the tonnage; that is the simplest and most practical way as we look at it to get at the value of the mains"?

Objected to by complainant same grounds.

A. I don't remember that I was sworn when appearing before the board of review and I don't remember the question to which you refer.

786 31. If not sworn at the time and place in question, did you not make the following statement before the board of review of Peoria county, "We did not make it up in that way; in making up the schedule we went at it in a different way from that; we took the price of the pipe in the street; the pipe delivered cost us all the way from $15. to as high as $25. a ton and we figured the tonnage of the pipe and figured it on the basis of the tonnage; that is the simplest and most practical way, as we look at it, to get at the value of the mains"?

A. I do not now remember.

32. Did you not, after being first duly sworn, before the board of review of Peoria county, Ill., at the same time and place, in answer to the question, "Could you arrive at an estimate as to what 80852 feet of 4 inch mains were worth," testify, "About 30 cents a foot now laid in the street."

Objected to by complainant as immaterial, incompetent and not cross examination.

The MASTER: The witness may answer subject to the objection.

A. I don't remember that I was sworn or testified before the board of review.

33. If you were not sworn before the board of review, did you not at the same time and place in the presence of the board of review of Peoria county make the statement substantially as given?

Objected to by complainant same grounds.

A. I don't now remember.

34. Did you not before the board of review of Peoria county, Ill., at the same time and place, in answer to the question, "That includes laying and everything" testify, "Of course, when you come to that question you have to consider in connection with
787 that—you have to take that as an average condition and also have to consider that the question of its value laid in the streets adds labor and also deducts labor. In other words, taking what that pipe is worth in the street as physical property, you have to consider what it would cost to take it out of there."

Objected to by complainant same grounds.

A. I don't remember that I was sworn or testified when I appeared before the board of review; I don't remember now whether I stated substantially the matters contained in that interrogatory or not.

35. Did you not before the board of review at the same time and place in answer to the question, "You take the cost of putting it down" did you not testify, "No, add the cost of putting it down"?

A. I don't now remember.

36. Did you not before the same board at the same time and place after having first been duly sworn in answer to the question, "Now in the 12,874 feet of 6 inch pipe" testify, "I have to give you that from memory but it was about 40 cents a foot; 8 inch pipe runs about 50 cents; 10 inch pipe about 60 cents; 12 inch pipe between 75 and 80 cents, and 16 inch pipe about a dollar"?

Objected to by complainant same grounds.

A. I don't remember that I was sworn when appearing before the board of review and I don't remember now as to the figures which you state in your interrogatory. I made the statement that the values as contained in the schedule submitted by me were what I considered to be the fair cash value of the property dissociated and separate from the license to do business and to occupy the public streets and I believe I stated then and believe now that those values as stated by me were true and correct and
788 were the maxium values of the property under the conditions under which the schedule was made.

37. Do you remember when that schedule was filed?

A. No, I do not.

38. Was it before the institution of this suit?

A. My recollection is it was after the institution of this suit.

39. You testified in your direct examination that it was customary

where a charge of 6½ per cent. was made for depreciation to charge that 6½ per cent. to the construction account and afterwards at the end of the year credit it to depreciation account—do you then in figuring up the profits of a company take into consideration the fact that this amount of money has gone into construction account and figure a percentage of profit upon the amount of money so charged to construction account?

A. You have not stated that as I testified to it. I testified that the amount of depreciation should be set aside as a fund and reinvested in the extension and replacements of the plant of the company; when this money was so invested and spent, the purposes for which it was spent, or rather the constructions for which it was spent, should be charged to the construction account and carried in that account until the end of the fiscal year; at that time the total amount of depreciation should be credited to construction account, thereby reducing the account by that amount and should be charged to depreciation account; at the close of the year the depreciation account should be charged direct to profit and loss thereby wiping out the depreciation account as a live account on the books of the company, and when that method has been adopted by a company no profits on the amount of the construction arising out of this depreciation fund would be entitled to or receive dividends or profits.

789 40. Would you then after this amount of money had been placed in extensions or replacements calculate depreciation upon those extensions and replacements?

A. No sir.

41. When if at any time would the amount of money that was taken from the depreciation fund commence to be considered in making up the profits of the business?

A. It is customary to make up the statement of the profit and loss account, which shows the profit of the business, after the closing of the books at the end of the fiscal year; the depreciation each year is at that time charged into the profit and loss account against the earnings or profits of the company.

42. Would the amount taken from the depreciation account and used in the extensions or replacements of the system be ever made the basis for an increase in the capital stock of the company?

A. Not under a proper system of accounting.

44. When you were laying the mains of the Peoria Gas & Electric Co. at what points in the city of Peoria did you strike a mixture of gravel and sand?

A. In a large part of the pipes which were laid under the bluff; that is to say, we struck it on Persimmon street in the alley between Washington and Adams streets; on Adams street south of Persimmon street; on Warner avenue and in nearly all of the district between, we will say, Spencer street and Main street under the hill, or to put it more this way—south and west of Main street and Adams street between those streets and the river.

45. Have you any gas pipe on Warner avenue?

A. I think we have for a small distance (witness referring to plat). I am wrong about that, it is between Warner avenue and Adams street.

790 46. Where did you find the filled ground in the city of Peoria in the laying of the mains of the Peoria Gas & Electric Co.?

A. I don't know all of the places; we found filled ground in the alley between Washington and Water streets; filled ground on the lower end of Persimmon street; some filled ground on South Adams street below Persimmon street, and possibly in other places. I do not now remember exactly where.

47. What part of the city of Peoria is the most thickly settled district in the city?

A. In a general way, I should say the fourth ward is.

48. How about that part of the city south west of Persimmon street and west of Spencer street?

A. That is thickly settled.

49. Have you any gas mains in that locality?

A. No, but that is where we have been trying to get some; that is where the ordinance was vetoed.

50. That was subsequent to the passage of this ordinance fixing the maximum price to be charged for gas in the city of Peoria, was it?

A. Yes sir.

51. Is the gas stove department of the Peoria Gas & Electric Company a self sustaining department?

Objected to by complainant as incompetent and immaterial unless the question is confined to a period before September 1, 1900?

A. Yes sir, that is, it is self sustaining to the extent that the price at which stoves are sold as a general proposition equals the cost of the stove; it does not pay the expense of the solicitor or the people who set stoves or look after them afterwards.

791 52. How many men have you employed in the soliciting and canvassing department of the Peoria Gas & Electric Company?

A. We have one man now employed who does soliciting, canvassing and collecting.

53. Does he also collect for the electric branch of the Peoria Gas & Electric Company?

A. Not as a rule.

54. You testified in direct examination that owing to the improvement in machinery the amount of coke obtained from a ton of coal was increased from about 35 per cent. to 60 per cent.?

A. No I testified that the amount of coke available for sale had increased and the amount of coke used to heat the benches had decreased.

(The MASTER:)

55. In other words, there had been a saving in both direction
A. Yes sir.

(Mr. MANSFIELD:)

56. Did you not testify that where formerly the percentage of
used amounted to 60 per cent. that at the present time it amou
on an average to about 25 per cent. for use under the retorts?

A. I think I testified that formerly from 50 to 60 per cent. o
coke made was required to heat the retorts and at the present
only 25 to 30 per cent. is required for the same purpose. I mea
heating the retorts not only in the bench furnace, but also any
coke which may be used around the gas works; in other words,
the coke used in the production of gas is now from 25 to 3
cent. of the amount made while formerly it was from 50 to 6
cent. of the amount made.

57. Did these improvements lessen the cost of the manufactu
gas?

A. Yes, it lessens the cost per thousand feet.

792 58. Did these improvements increase or diminish
amount of residuals obtained from the manufacture of
gas?

A. Generally speaking the amount of residuals has not incr
as to amount of residuals made. As stated before, the imp
ments leave a larger proportion of the coke available for sale
amount of tar produced is slightly increased in recent years,
to some extent at the expense of the quality of the tar; the am
of ammonia I think is about the same as it was 8, 10 or 1
ago or more.

59. When were these material changes in the art of manufactu
gas first introduced?

A. The most important change was in the general adopti
regenerative benches and the discarding of the open fire ben
this change was made first 15 to 20 years ago, but it is only w
eight or 10 years that regenerative furnaces have been e
sively introduced among the smaller gas works; the changes i
condensation and purification systems have been slow and
hardly be said to have come in at any particular time; they
been a matter of evolution and of somewhat slow growth.

60. The introduction, then, of regenerative furnaces has ca
an increase in the production of gas made per man empl
has it?

A. The regenerative furnace is in part to be credited wit
increase in the production of gas per man employed, but the
cipal increase in this respect is due to the larger size of the be
and the additional number of retorts in each bench.

Re-direct interrogatories by Mr. ABBOTT:

1. In the interrogatories which have been propounded to you since you were recalled as a witness I have had in mind and
793 intended to confine all of my questions relating to the plant of the Peoria Gas & Electric Co. to the gas plant only. I will ask you to state if in all of your answers to my interrogatories you also had in mind and intended to testify with regard to the gas plant only of complainant company?

A. Yes sir, my testimony has related entirely to the gas plant of the Peoria Gas & Electric Company.

2. Is that true throughout your examination so far as it relates to interrogatories which may have been at other times propounded by other counsel?

A. Yes sir, only in the instances where I have specifically stated that my testimony related to the electric plant.

3. Where no language has been used as distinguishing it, as I understand you, you have intended and meant to be understood as indicating the gas plant only?

A. Yes sir.

4. In your cross examination, at the end of your first examination, you were asked certain questions in regard to alleged statements with reference to the service pipes of the company claimed to have been made before the board of review of Peoria county, Ill., in August, 1901, and in your re-direct examination following that cross examination you stated the basis and purpose of that examination as you understood it, that those statements were made under the advice of counsel on a certain definite basis and theory and for a certain specific purpose, if such statements were made. In your cross examination, since you have been recalled, you have been asked some similar questions with relation to statements claimed to have been made at the same time and place with reference to the gas mains of the company. State whether you desire that the same statement you made when asked to explain with
794 reference to the services applies also to the statement claimed to have been made by you with reference to the main pipes as well?

A. Yes sir.

5. Is it or is it not a fact that all such statements as were made at that time and place, if any were made, were for the sole and only purpose of fixing the valuation of the tangible property of the Peoria Gas & Electric Co. for taxation purposes and not otherwise?

A. The statements made by me were for the sole purpose of fixing a value on the tangible property of the Peoria Gas & Electric Co. for taxation purposes.

6. You were asked on cross examination some questions in relation to the market value of the entire plant considered as of the date of September 1, 1901, and answered, as I remember, substantially that its market value at that time you considered to be substantially

the same as on September 1, 1900. State whether or not in determining the market value of the property on September 1, 1901, you made such statement on the assumption that there had been a proper system of accounting, and book keeping, that a proper allowance, in your judgment, for depreciation of the plant had been entered therein, that the plant had been kept up to its condition as it existed on September 1, 1900, and that it had up to that time accumulated some business.

A. Yes sir, I took all those assumptions into consideration.

Re-cross interrogatories by Mr. MANSFIELD:

1. You testified in reply to the last interrogatory propounded to you by Mr. Abbott that in making up the fair cash market value of the plant on September 1, 1901, you took into consideration the fact that the company had obtained more customers. By
795 doing so you base your estimate, then, of the fair cash market value not only upon the tangible property of the Peoria Gas & Electric Co. but upon the amount of business the company was doing upon that date.

A. Not entirely. Mr. Abbott's question covered a very much wider range than that and assumed that there had been a proper system of accounting that the company had accumulated a business, which I assume to be a permanent business, and that the plant had been kept up to its normal efficiency and condition.

(Mr. RITCHER:)

Q. Is that a fact?

A. Yes sir.

Mr. IRWIN: For the purpose of further showing the hazards of the business, I offer in evidence on behalf of complainant the proceedings of the city council of the city of Peoria of the regular meeting of May 7, 1901, and will read from those proceedings the following extract: "The committee on streets, alleys and bridges to whom was referred the ordinance of C. V. Newman for the construction and operation of gas works, reported said ordinance, recommending the adoption of the same. The report was adopted on motion of Alderman Kasjens and the ordinance was ordered read. The ordinance was read and amendments offered by Alderman Kasjens to section 4, 8, 9, 12, 13 and 15 were unanimously adopted by the council. The ordinance was then placed upon its passage on motion of Alderman Kasjens and adopted by the following vote:—Ayes, Aldermen Bartholomew, Case, Gauss, Kasjens, Proctor, Simmons, Stillwell and Woodruff—eight."

Objected to by defendant as incompetent, immaterial and irrelevant, not tending to prove the issues in the case.

Mr. IRWIN: Further on the same subject, to show the hazards of the business, I offer in evidence on behalf of complainant a certified

copy of an ordinance, entitled "An ordinance granting to
796 Charles V. Newman, his associates, successors and assigns the right to lay gas mains and distribute gas in and along the several streets and highways in the city of Peoria, Illinois." Adopted by the city council of the city of Peoria on the 7th day of May, 1901, and also offer in connection with it the certificate of the clerk as to its being a true copy, which said certified copy of ordinance together with the certificate attached thereto is hereto attached marked "Exhibit 14."

Objected to by defendant as immaterial, incompetent, irrelevant and not tending to prove the issues in this case.

Mr. IRWIN: On the same subject, and for the same purpose, I offer in evidence on behalf of complainant a certified copy of an ordinance entitled, "An ordinance granting the Peoria Gas & Electric Co., its successors and assigns, the right to lay and maintain gas mains and pipes in and along certain streets, avenues and public highways in the city of Peoria, Ill." as passed by the city council on the 18th day of June, 1901, together with the certificate of the city clerk and the veto of the mayor of the city of Peoria attached thereto, which said ordinance, certificate of clerk and veto of the mayor is hereto attached marked by the master "Exhibit 15."

Objected to by defendant for the same reasons as Exhibit 14 was objected to.

Mr. IRWIN: I now offer in evidence generally on behalf of complainant in support of the allegations of the bill in this case, an ordinance entitled, "An ordine-ce granting to the People's Gas & Electric Co. the right to lay gas mains and pipes, and distribute gas in and along the several streets and highways in the city of Peoria,
Ill., as adopted by the city council of the city of Peoria
797 on the 18th day of April, 1899, together with the certificate of the city clerk attached thereto, it being the original ordinance—license or franchise, granted to the complainant by the city council of the city of Peoria, which said ordinance and certificate is hereto attached marked by the master "Exhibit 16."

Objected to by defendant as incompetent, immaterial, irrelevant and not tending to prove the issues in this case.

Mr. IRWIN: I now offer in evidence on behalf of complainant, for the purpose of showing the hazards of the business and also for general purposes an ordinance entitled, "An ordinance regulating and fixing the maximum price of gas in the city of Peoria passed by the city council the 4th day of September, 1900, together with the certificate of the city clerk as to its authenticity, which said ordinance and certificate is hereto attached marked by the master "Exhibit 17."

Objected to by defendant as immaterial, incompetent, irrelevant and not tending to prove any of the issues in this case.

Mr. IRWIN: If the master please, this closes the complainant's case with the exception, perhaps, of one witness. We may want to put Mr. Summerville of Indianapolis on the stand at some time

when we can secure his attendance but I now stipulate we will offer no evidence on any new points from him; his testimony will simply be cumulative testimony along the same lines other experts have testified. Mr. Summerville is in the East and we have not been able to secure his attendance and I don't know just when we can get him. I really do not know at the present time whether we will take his testimony at all but, if we desire to, I would like to reserve the right to take his testimony on the stipulation we
798 will offer nothing new so as not in any way to delay the defense in proceeding with its case.

The MASTER: You, then, close complainant's case do you?

Mr. IRWIN: Yes sir.

The MASTER: The master desires to congratulate counsel for complainant on the expedition with which they have put in their evidence in this case, it being barely two months since we commenced taking testimony.

As counsel is unable to agree on the time when the defendant shall proceed to put in its testimony, the master will fix the time. The defendant will commence to take testimony on its part Tuesday, February 11, 1901, at such place as may be designated by the master.

Adjourned.

798a EXHIBIT "14." I. C. Pinkney, Master.

An Ordinance.

An ordinance granting to Charles V. Newman, his associates, successors, and assigns, the right to lay gas mains and distribute gas in and along the several streets and highways in the city of Peoria, Illinois.

Be it ordained by the city council of the city of Peoria, Illinois.

SECTION 1. That, subject to the terms and conditions of this ordinance hereinafter specified, there is hereby granted to Charles V. Newman, his associates, successors and assigns, (hereinafter to be known and designated by the general term of grantees) the right to construct, operate and maintain a gas plant, to lay and maintain main pipes and service pipes for gas in and along the streets, alleys and public places of the city of Peoria, Illinois, for the distribution to consumers of gas for illuminating, heating and power purposes, and to prescribe the terms and conditions thereof, in so far as such terms are not determined by this ordinance.

SECTION 2. That, pursuant to the petition of the owners of the land representing more than one-half of the frontage on the streets, avenues and public highways hereinafter named, there is hereby granted to the grantees aforesaid the right and authority to construct, lay and maintain gas mains, service pipes, branches, feeders,

ut-offs and manholes in, along and upon the following named
treets, avenues and highways in the said city of Peoria, for the pur-
ose of furnishing the said city of Peoria and the inhabitants thereof
ith gas for lighting, heating and power purposes, to-wit:

Fayette street from Water street, the initial point, to Knoxville
venue.

Knoxville avenue from Fayette street, the initial point, to Ne-
braska avenue.

98b Main street from Water street, the initial point, to Eliza-
beth street.

Jackson street, from Washington street, the initial point, to Bluff
treet.

Bluff street from State street, the initial point, to Jackson street.

Glen Oak avenue from Jackson street, the initial point, to Wis-
onsin avenue.

Adams street from Spring street, the initial point, to Pecan street.

Washington street from Jackson street, the initial point, to Pecan
treet.

Franklin street from Adams street, the initial point, to Seventh
venue.

Perry street from Franklin street, the initial point, to Main
treet.

And such other streets, avenues and alleys upon which said
rantee may from time to time obtain frontage.

Also the right and authority to connect the same with main pipes
eeders and service pipes that may hereafter be laid or maintained
y grantees and in and along any other streets, avenues or public
ighways in said city of Peoria for the purposes aforesaid.

SECTION 3. That before any work of construction shall be com-
menced under the rights and privileges conferred by this ordinance
rantees shall execute to the city of Peoria a bond in the penal sum
f ten thousand dollars ($10,000) with good and sufficient surety
which said surety may be a corporation organized and legally au-
horized to do surety business); said bond so given to be approved
y the mayor and city council and filed in the office of the city
lerk, the conditions of which bond shall be to keep the city of
Peoria harmless from all damages of every kind and nature
98c whatsoever, occasioned by the aforesaid grantees operating
under this ordinance, and to indemnify all persons or cor-
orations damaged or injured by reason of the negligent acts of
aid grantees or their employees in and about the exercise of the
ights and privileges by this ordinance granted.

SECTION 4. That grantees shall, within three months from the date
f the passage of this ordinance file their indemnity bond as in sec-
ion (3) above provided, and shall within said three (3) months
egin the construction of their gas plant within the city of Peoria,
nd shall within fifteen (15) months from the date of the passage of
his ordinance supply gas to consumers for illuminating and heating
urposes. Provided, however, that the time during which any

legal proceedings shall be pending whereby said grantees shall be prevented or delayed in complying with the requirements of this section, shall not be taken or deemed any part of the time herein specified. Failure on the part of the grantees to strictly comply with the provisions of this section shall, at the option of the city council, operate as a forfeiture of all further rights and privileges under this ordinance. Written notice of such option on the part of the city shall be given to grantees at least ten days before such forfeiture shall take effect, which notice may be left at the office of grantees in charge of any person there employed by said grantees, and the same shall be deemed a sufficient notice.

SECTION 5. That grantees, when so ordered by a vote of the city council shall extend mains on any street, avenue or public highway contiguous to the mains belonging to said grantees, which at such times are in use and operation; provided, however, that said grantees shall not be required to so extend their mains until given a good and sufficient guarantee that the annual revenue to be derived by grantees from such extension shall not be less than one hundred dollars ($100) for each six hundred feet of main extension so ordered.

798d SECTION 6. That grantees shall do no permanent injury to any street, sidewalk, alley or public place, and whenever said grantees shall desire to open ground on any street or public place, or to disturb any pavement or sidewalk for the purpose of operating under this ordinance they shall first secure a permit therefor from the commissioner of public works, and grantees shall complete such work without delay and shall forthwith restore such street, public place, pavement or sidewalk so disturbed to a condition equally as good as it was before being disturbed. That the work of restoration shall be done under the direct supervision of the city department of public works, at grantees' expense which shall include a reasonable inspector's fee for such person, who shall be placed in charge of the supervision of such work of restoration by the department of public works. That where the streets and avenues of the city of Peoria have been permanently paved, if it be practical such streets and avenues and the buildings and residences thereon situated, shall be supplied by laying all necessary gas mains and service pipes through the alleys, thereby avoiding as far as possible the necessity of disturbing said permanent pavings. That whenever any street, avenue or public place is about to be permanently improved by paving or otherwise so as to make it desirable that gas mains and service pipes be laid before such permanent improvement is made, the commissioner of public works shall notify grantees of such proposed improvement, and said grantees shall at their own expense within thirty (30) days after such notification begin the work of laying gas mains, including all service pipes and connections to the curb line along said proposed improvement, and shall push such work to completion without delay; provided however, that grantees shall not be required to make connections with their

mains in operation nor furnish gas unless the nearest point of their mains already laid and in operating shall be within 600 feet of the mains so ordered laid, and provided further that all proper connections shall be made and gas furnished at any time when grantees' gas mains in operation shall approach at its nearest
798e point within 600 feet of the mains thus laid, if said grantees shall be furnished the guarantee as in section (5) above provided.

SECTION 7. That at no time shall any consumer be charged or be compelled to pay for the gas by him consumed and furnished under this ordinance to exceed seventy-five cents per thousand cubic feet. That the candle-power of the gas so furnished shall be as follows:

For coal gas it shall be eighteen candle power.

For mixed coal and water gas, it shall be twenty-two candle power.

For water gas, it shall be twenty-five candle power.

SECTION 8. That the grantees herein shall immediately proceed to organize and incorporate a company or corporation under the laws of the State of Illinois, to be known as the "Citizens Gas Light and Fuel Company of Peoria," for the purpose of operating the gas plant in accordance with the rights and privileges by this ordinance granted, to whom upon its organization as above specified grantees shall immediately assign and transfer according to law this franchise, together with all the rights and privileges by this ordinance granted; subject to all the restrictions and undertakings herein placed upon and assumed by grantees; and said company shall take the place of grantees and do and perform their undertakings hereunder, and such assignments shall be filed in the clerk's office of the city of Peoria, and also be recorded in the office of the recorder of deeds in and for Peoria county and no other or further assignment or transfer shall be made, except by mortgage, without the consent of the city council of Peoria; provided, that no mortgage of said gas company or corporation shall be made which shall have any effect whatever of curtailing any of the rights of the city of Peoria under this ordinance. In case said grantees do not organize said company and the franchise by this ordinance granted shall not have been transferred and assigned to said company or corporation within three (3) months of the date of its passage
798f then said ordinance shall become null, void and inoperative, and all rights and privileges hereunder granted shall be forfeited.

SECTION 9. That upon the assignment and transfer of the franchise, rights and privileges by this ordinance granted, to the Citizens Gas Light and Fuel Company as in section eight (8) above provided, and said company's acceptance of the assignment, the said company shall immediately deposit with the city treasurer of the city of Peoria a certified check for ten thousand dollars ($10,000) payable to the order of the city treasurer, and certified to by a bank of the city of Peoria, as a guarantee of good faith upon the part of said com-

pany in compliance with the conditions and provisions of this ordinance by it assumed. That such check shall remain in the custody of the city treasurer, subject to forfeiture for any failure on the part of said company to comply with the terms of this ordinance upon it imposed, until such time as the said company shall have constructed its plant and commenced to furnish gas under this ordinance and shall have substituted for such certified check a bond as hereinafter provided. That such check shall be forfeited to the city of Peoria without further legal process whenever there is a substantial violation by the said company of any of the conditions upon it imposed by this ordinance, said forfeiture to be ordered by the city council whenever it shall find that there has been such violation. That after the gas plant shall have been constructed and said company shall thereby furnish gas to its patrons, said certified check shall be surrendered to said company upon its first filing with the city clerk a good and sufficient bond in the penal sum of ten thousand dollars ($10,000) to be approved by the mayor and city council, conditioned upon said company's faithful observance of all the conditions upon it imposed by this ordinance and its operation under the franchise hereby granted, said bond to continue during the life of this ordinance, and to be subject to forfeiture at any time upon the order of the city council whenever it shall deter-
798g mine said company to have substantially violated any of the conditions by this ordinance upon it imposed.

SECTION 10. That any time after the assignment and transfer of the franchise, rights and privileges granted under this ordinance, to the Citizen's Gas Light and Fuel Company, as in section (8) above provided, the city of Peoria, as a municipal corporation, shall have the right to purchase at a fair market value the gas plant of the grantees, and all things pertaining thereto, as herein provided, on the following conditions, and the grantees in accepting this ordinance, expressly covenant and agree to sell to the city of Peoria the said gas plant, provided the said city may at said time have the power to purchase the same, or to contract for the payment of the same or shall pay for the same in cash, and upon the payment for the same grantees shall convey said gas plant and all things pertaining thereto, to said city of Peoria, free from all liens upon the following conditions, viz:

The city of Peoria, by resolution of its city council, shall determine to purchase the said gas plant, and shall serve a certified copy of such resolution on the grantees at least six months before the time or times when the city of Peoria may desire to exercise the right of purchase hereinbefore granted; service of such certified copy may be made as provided for service notice in section (4) above. In case the city and the grantees shall be unable to agree upon a price to be paid for said gas plant as a fair market value, then such value shall be left to three disinterested experts as appraisers of which the city of Peoria shall select one, grantees a second and these two shall choose a third. These three appraisers shall consti-

tute a commission, shall examine and take testimony of experts and otherwise determine the then existing fair market value of the gas plant and all that pertains thereto; but in ascertaining such fair market value they shall not appraise nor take into consideration the then unexpired term of the franchise granted by this ordinance but shall equitably decide what amount the city of Peoria is justly
798*h* and fairly entitled to pay as a fair market value to the grantees for the gas plant and all that pertains thereto, save said unexpired franchise, and shall make a written award of the then fair cash market value of such gas plant property, in duplicate, and shall deliver one of such awards to the city clerk, and the other to grantees, and the city of Peoria shall then have the option of purchasing or refusing to purchase the said gas plant at the price so fixed. But in no event shall the city pay more than the actual cost of the material and labor used in constructing and improving such gas plant, and said appraisal shall be made upon this basis. If the said city shall then elect to purchase, it shall give the grantees notice of such election within sixty days from the delivering of said award to the city clerk as aforesaid, and failure to give such notice to grantees shall constitute an implied refusal on the part of the city to make such purchase, according to the terms of the award filed with the city clerk. Provided that neither an express nor implied refusal on the part of the city to purchase as above provided, shall operate as a bar against said city at any future time again exercising its option as herein provided. Upon the city's election to make such purchase, it may pay the whole or any part of such award, but it shall not pay less than one-sixth of the same on or before the expiration of three months after its election to purchase, and on or before the expiration of each successive period of three months thereafter it may pay the whole or any part of the remainder, but it shall not pay less than one-sixth part of the whole award at each of said periods until the whole shall be paid. Interest, not exceeding the legal rate for Illinois, shall be paid by the city on all deferred payments from the date of the first payment to the time of the payment of each and all of the said deferred payments, at such rate per annum as the appraisers may fix as just and proper. But the said city shall have no right to any of the property or income of the said gas plant until such time as it shall take actual possession of the property and make the first payment of the purchase money aforesaid,
798*i* and at such time an adjustment of accounts between the city and grantees for gas furnished or supplied by grantees and not then paid for shall be had. But if the city shall fail or refuse to purchase it shall pay all the necessary expenses incurred by said appraisers in or on account of the appointing of such appraisers and making such award, but in case the purchase is completed and such purchase money paid, then shall such expense be equally divided between the city and the grantees. When the first payment as fixed by this section shall have been made, the city of Peoria shall be im-

mediately put in to possession of said gas plant, and all payment when made shall be applied under the direction of the city if the city sees fit to so direct, to the liquidation and extinguishment of all indebtedness of said grantees, which are liens upon said gas plant and upon full payment for said gas plant, said grantees shall convey the same free from all liens and incumbrances whatsoever to the city of Peoria.

SECTION 11. That the subscriptions to said stock in said company to be organized and incorporated by grantees as above provided shall be open to all citizens of Peoria who may desire to subscribe for stock and that in such subscription for stock, small subscribers shall have the preference and shall be accommodated before those desiring to subscribe for large amounts.

SECTION 12. That the rights and privileges hereby granted are upon the express condition that all the provisions and limitations in this ordinance enumerated and imposed upon grantees shall inhere in and be a part of any sale, lease, transfer or combination which aforesaid grantees or their successors, the Citizens Gas Light and Fuel Company of Peoria, Illinois, shall make to or with any other company, trust or corporation or individual now engaged or hereafter to be engaged in the manufacture or sale of gas in the city of Peoria, Illinois, which is not prohibited by section eight (8) and ten (10) above, and any sale, lease, transfer or combination made or attempted to be made in violation of the terms of this section shall be null, void and inoperative; and that in consideration of the rights and privileges by this ordinance granted to the aforesaid grantees, the franchise, rights and privileges by this ordinance granted shall not be sold, transferred or assigned to any person or persons, firm or corporation, or in any other manner except as specified in sections eight (8) ten (10) and twelve (12) of this ordinance and that any attempt on the part of the grantees or their successors to sell out or dispose of their gas plant in any other manner shall operate as a forfeiture of this ordinance and all rights to operate under it.

798j

SECTION 13. That grantees shall upon their acceptance of this ordinance immediately deposit with the comptroller, of the city of Peoria, the sum of five thousand dollars ($5000) in United States currency to insure their faithful performance of organizing and incorporating the Citizens Gas Light and Fuel Company and assigning and transferring to said company the franchise, rights and privileges by this ordinance granted within the time specified in section eight (8) above. That such money so deposited shall be forfeited to and become the property of the city of Peoria without further legal process whenever there is a substantial violation of the conditions by this section imposed upon grantees, and that such forfeiture shall be ordered by the city council whenever it shall determine that there has been such violation.

SECTION 14. That the rights and privileges by this ordinance

granted shall continue for a term of fifty (50) years from the date of its passage.

SECTION 15. That said grantees shall file with the city clerk their written acceptance of this ordinance within ten (10) days after its passage and that upon their failure to do so within the time specified this ordinance to become null and void.

7981 SECTION 16. That this ordinance shall be in force and effect from and after its passage.

Passed in council this 7th day of May, 1901.

(Signed) HENRY W. LYNCH, *Mayor.*

(Copy)
ROBERT M. ORR, *City Clerk.*

STATE OF ILLINOIS, }
City and County of Peoria, } *ss:*

I, Robert M. Orr, city clerk of the city of Peoria, do hereby certify that I am city clerk of the city of Peoria, and the keeper of the records of said city, and that the annexed and foregoing ordinance is a true copy of an ordinance granting to Charles V. Newman and assigns the right to construct a gas plant, etc. of which it purports to be a copy, as the same appears among the records in my office.

Witness my hand and the official seal of said city this ninth day of January A. D. 1902.

[MUNICIPAL SEAL.] ROBERT M. ORR, *City Clerk.*

7981 EXHIBIT "15." I. C. Pinkney, Master.

To the city council of the city of Peoria.

GENTLEMEN:—In accordance with statutory enactment I return herewith an ordinance *entitled*, "An ordinance granting to the Peoria Gas & Electric Company the right to lay and maintain gas mains and pipes in and along certain streets in the city of Peoria," which was before your body for consideration and approval at the last regular meeting of the city council, together with my veto and reasons therefor:

At the time of the granting of the original franchise to this company, representations were made to the people and to the members of this council, to induce the city council to grant the franchise; among the representations so made the following appears:

"The signers of these petitions believe that competition will reduce the price of gas and result in saving thousands of dollars yearly to the public of Peoria."

The city council at that time believing that these representations were made in absolute good faith, as they were alleged to be by the

promoters and stockholders of this company, granted the original franchise. The result is known to not only the members of the council, but to all citizens generally. Instead of reducing the price of gas the citizens are now paying one (81) dollar per thousand cubic feet, when before the passage of the ordinance, they were only paying seventy-five — (75c.) per thousand cubic feet for fuel gas. On account of this raise in the price of gas by the gas companies, the city council in its wisdom, passed an ordinance fixing the maximum price that could be charged for gas furnished consumers in the city of Peoria. That ordinance fixed the maximum price to be charged for gas at seventy-five — (75c.) per thousand cubic feet and has never been repealed, and is now and ever has been since its passage,
798*m* a law in the city of Peoria; yet notwithstanding this law so passed by the council, the People's Gas & Electric Company, now Peoria Gas & Electric Company, come before your honorable body and request that you grant them further concession, ignoring completely the action taken by the preceding council in passing the maximum gas rate ordinance. You are also aware that litigation is now pending in the United States court brought by the Peoria Gas & Electric Company for a construction of the ordinance limiting the maximum price to be charged for gas in the city of Peoria, which litigation is far from determination.

If you pass the present ordinance applied for by the Peoria Gas & Electric Company, you not only ignore the former action of the city council, but you also ignore the litigation pending in the United States court, and you grant to the said gas company, in the teeth of its breach of faith, the further privilege of charging an exorbitant price for gas in another district of the city of Peoria.

I am therefore of the opinion that this council, if for no other reason than to be consistent, should either repeal the maximum gas rate ordinance and allow the present litigation pending in the United States court to go by default, or refuse to pass the present ordinance to the Peoria Gas & Electric Company.

For these reasons I hereby veto an ordinance entitled, "An ordinance granting to the Peoria Gas & Electric Company, its successors or assigns, the right to lay and maintain gas mains and pipes in and along certain streets, avenues and public highways in the city of Peoria, Illinois," passed by your honorable body on the 18th day of June, 1901.

WILLIAM F. BRYAN, *Mayor.*

798n *Ordinance.*

An ordinance granting the Peoria Gas and Electric Company, its successors and assigns, the right to lay and maintain gas mains and pipes in and along certain streets, avenues, and public highways in the city of Peoria, Illinois.

Be it ordained by the city council of the city of Peoria, Illinois:

SECTION 1. That whereas, the owners of more than one-half of the land fronting and abutting upon the following streets, avenues and public places, viz:

Along Cass street, from Helen street, the initial point, to Antoinette street.

Along Antoinnette street, from Helen street, the initial point to Louisa street.

Along Louisa street, from Ann street, the initial point, to Garde street.

Along Olive street, from Adams street, the initial point, to Lincoln avenue, and

Along Henry street, from Olive street, the initial point, to Tyng street, have petitioned the city council of the city of Peoria, Illinois, to grant to the Peoria Gas and Electric Company the right to construct lay and maintain gas mains and pipes for the distribution of gas for fuel, light, heat and power purposes, in and along said respective streets avenues and public places above named, between the said points designated.

798o Now, therefore, in pursuance to the prayer of said respective petitions, the right, power and authority be, and is hereby granted to the Peoria Gas and Electric Company, its successors and assigns to construct, lay and maintain gas mains, pipes, branches, feeders, service pipes, cut-offs and man-holes, in, under and along the following named streets, avenues and highways in the said city of Peoria, Illinois, for the purpose of furnishing said city and the inhabitants thereof with gas for fuel, light, heat and power, viz:

Along Cass street, from Helen street, the initial point, to Antoinette street.

Along Antoinette street, from Helen street, the initial point, to Louisa street.

Along Louisa street, from Ann street, the initial point, to Garden street.

Along Olive street, from Adams street, the initial point to Lincoln avenue.

Along Henry street, from Olive street, the initial point, to Tyng street.

Also the right to join and connect the same with any gas mains, pipes, feeders and service pipes that may be laid or maintained by said company, its successors and assigns in and along any other

streets, avenues and public highways in said city for the purposes aforesaid.

SECTION 2. That the right power and authority hereby granted is subject to, and shall be governed by all the terms, conditions and requirements contained and set forth in a certain ordinance entitled "An ordinance granting to the Peoples Gas and Electric Company (now Peoria Gas and Electric Company) the right to lay gas mains and pipes, and distribute gas in and along the several streets, and highways in the city of Peoria, Illinois," passed and adopted
798p by the city council of said city, on the 18th day of April, A. D. 1899.

Passed in council this 18th day of June, A. D. 1901.

—— ——, *Mayor.*

Copy.

Vetoed by Mayor W. F. Bryan.
July 2nd, 1901.

ROBERT M. ORR, *City Clerk.*

ROBERT M. ORR, *City Clerk.*

STATE OF ILLINOIS,
City and County of Peoria, } ss:

I, Robert M. Orr, city clerk of the city of Peoria, do hereby certify that I am city clerk of the said city of Peoria, and the keeper of the records of said city, and that the annexed and foregoing ordinance and veto of Mayor Bryan, is a true copy of an ordinance granting to the Peoria Gas and Electric Company, the right to lay and maintain gas mains on certain streets, &c. &c. passed by the city council on the 18th day of June A. D. 1901, and the veto thereof by Mayor Bryan, the 2nd, day of July, A. D. 1901, of which it purports to be a copy, as the same appears among the records of my office.

Witness my hand and the official seal of said city, this eight day of January A. D. 1902.

ROBT M. ORR, *City Clerk.*

798q EXHIBIT "16." I. C. Pinkney, Master.

An Ordinance.

An ordinance granting to the Peoples' Gas and Electric Company the right to lay gas mains and pipes and distribute gas in and along the several streets and highways in the city of Peoria, Illinois.

Be it ordained by the city council of the city of Peoria:

SECTION 1. Subject to the terms and conditions of this ordinance, there is hereby granted to the Peoples' Gas and Electric Company,

a corporation created and existing under and by virtue of the laws of the State of Illinois, its successors and assigns, the right to construct, repair, maintain and operate gas works within the city of Peoria, together with the right of way along, upon and under all the avenues, streets, alleys highways and public places in said city, for the purpose of placing, operating, repairing and maintaining one or more lines of gas mains and pipes and all necessary feeders, service pipes, branches, cut-offs and manholes in connection therewith, for the distribution of natural or manufactured gas, for light, fuel heat and power purposes.

SECTION 2. That in pursuance to the petition of the owners of the land representing more than one-half of the frontage on the streets, avenues and public highways hereinafter named, the right and authority is hereby granted to said Peoples' Gas and Electric Company, its successors or assigns to construct, lay and maintain gas mains, pipes, branches, feeders, service pipes, cut-offs and manholes in, under and along the following named streets, avenues, and highways in the said city of Peoria, Illinois, for the purpose
798r of furnishing the said city and the inhabitants thereof with gas for light, fuel, heat and power, viz:

Persimmon street from Grove street, the initial point, to Spencer street.

Spencer street from Persimmon street, the initial point, to Elizabeth street.

Elizabeth street from Spencer street, the initial point to city limits.

Saint James street from Elizabeth street, the initial point to University street.

University street from St. James street, the initial point, to Moss avenue.

The alley dividing the blocks and lying between Adams street and Warner avenue, from Persimmon street, the initial point to Monson street.

Prairie street (or alley) from Monson street the initial point to Adams street.

Adams street, from Prairie street (or alley) the initial point to Franklin street.

Franklin street from Adams street the initial point, to Seventh avenue.

Perry avenue, from Franklin street, the initial point to Main street.

Main street from Water street, the initial point to University street.

The alley dividing the blocks and lying between Adams street and South Jefferson avenue from Franklin street, the initial point, to Fulton street.

The alley dividing block ten (10) in the original town of Peoria and lying between Main street and Fulton street, from Adams street, the initial point, to Jefferson avenue.

798s The private alley running through lot seven (7) in ten (10) original town of Peoria, from Fulton stre initial point, to the main alley in said block.

Knoxville avenue from Main street the initial point to Ne street (city limits).

The alley dividing the blocks and lying between Fredon nue and Barker avenue from University street (foremerly B street) the initial point, to Western avenue.

The alley dividing the blocks and lying between Fifth a and Sixth avenue from Spencer street the initial point to Fr street.

The alley dividing the blocks and lying between First a and Second avenue from Spencer street the initial point to Fr street.

East Armstrong avenue (formerly Taylor street) from Kn avenue, the initial point, to Glen Oak avenue, formerly street.

Wayne street, from the alley lying between Perry avenu Glendale avenue on said Wayne stree-, the initia' point, to Oak avenue (formerly Bluff street).

The alley dividing the blocks and lying between Madison a and Jefferson avenue from Franklin street, the initial poi Abington street.

The alley dividing the blocks and lying between Perry a and Glendale avenue from Main street, the initial point, to street.

Adams street from Persimmon street the initial point to W avenue.

The alley dividing the blocks and lying between Third a and Fourth avenue, from Spencer street the initial point to Fra street.

798t The alley dividing the blocks and lying between S avenue and Third avenue from Spencer street the initial to Franklin street.

The alley dividing the blocks 15, 16, and 18 in Callender & addition; said alley lying in the rear of said blocks from Ma street, the initial point, to Western avenue.

The alleys in block nine (9) Callender & Ayer's addition the alley in Moss Avenue addition from Malvern street, the i point to Barker avenue.

The alley dividing blocks and lying between Adams street Washington street from Bridge street, the initial point, to I street.

The alley dividing the blocks and lying between Monroe av and Madison avenue from Franklin street, the initial point to ington street.

The alley dividing the blocks and lying between Fourth av and Fifth avenue from Spencer street, the initial point to F street.

The alley dividing the blocks and lying between Fourth avenue and Fifth avenue from Franklin street, the initial point, to Sanford street.

Chambers avenue, from Knoxville avenue, the initial point, to Elizabeth street.

Bridge street from Adams street, the initial point, to Water street.

The alley dividing block twelve (12) in Pulsipher's second division from Chambers avenue, the initial point, to Hamilton street.

The alley dividing block thirteen (13) in Pulsipher's second division, from Chambers avenue, the initial point, to Hamilton street.

798u Harrison street, from Franklin street, the initial point, to Water street.

Adams street, from Eaton street, the initial point, to the alley lying between Hancock and Eaton streets.

The alleys lying within the block bounded by Eaton street, North Jefferson avenue, Hancock street and Adams street, running from Adams street to Hancock street from Adams street, the initial point, to Hancock street.

Malvern street, from the alley lying between Barker avenue and Fredonia avenue, the initial point, to Bradley avenue.

The alley dividing the blocks and lying between Sixth avenue and Seventh avenue from Spencer street, the initial point to Franklin street.

First avenue from Spencer street the initial point, to Seventh avenue.

Second avenue from Spencer street the initial point to Seventh avenue.

Third avenue from Spencer street the initial point to Sand street (near Seventh avenue).

Fourth avenue from Spencer street the initial point to Seventh avenue.

Fifth avenue from Spencer street the initial point to Saratoga street.

Sixth avenue from Spencer street, the initial point to Western limits, Sixth avenue.

Hurlburt street from Spencer street the initial point to Steubenville street.

Hurlburt street from Spencer street the initial point to eastern limits of said Hurlburt street at Reed avenue.

Smith street from Spencer street the initial point to Steubenville street.

798v Johnson street, from Spencer street, the initial point to Steubenville street.

McBean street from Spencer street the initial point to Steubenville street.

Ellis street from Main street the initial p-int to Chambers avenue.

Flora avenue from Main street the initial point to Chambers avenue.

Malvern street from the alley between Fredonia avenue and Barker avenue, the initial point, to the line of alley in rear of Moss avenue.

Washington street from Chestnut street the initial point to Lisk street.

May street, Forsyth street and alleys all dividing the blocks and lying between Adams and Washington streets from Bridge street, the initial point, to the southwesterly terminus of said May street or alley.

The alley dividing blocks and lying between Adams street and Washington street, from the northeasterly end of Forsyth street, the initial point, to Bridge street.

Forsyth street or alley dividing blocks and lying between Adams street and Washington street from Persimmon street, the initial point, to its northeasterly terminus.

Alley divi-ng blocks and lying between Ayers avenue and Sherman avenue, from the center of the main alley in block 16 in Callender & Ayer's addition to Western avenue.

Alley divi-ng the blocks and lying between Perry avenue and Monroe avenue from Franklin street, the initial point, to Cornhill street.

Alley dividing blocks and lying between Washington street and Water street from Chestnut street, the initial point, to Eaton street.

798*w* Alley dividing block 11 in Pulsipher's 2nd division, from North street, the initial point, to Randolph avenue.

North street from Main street, the initial point, to Michigan avenue (city limits).

Eaton street, from alley in block (22) original town of Peoria, the initial point, to Adams street.

Alley dividing the blocks and lying between Adams street and North Jefferson avenue, from Hancock street, the initial point, to Grant street.

North Frink street, from Main street, the initial point, to Russell street.

South Garfield avenue from Main street, the initial point, to Moss avenue.

North Garfield avenue from Main street, the initial point, to Chambers avenue.

Abington street, from Adams street, the initial point, to Perry avenue.

Jefferson avenue from Abington street, the initial point, to Galena road (city limits).

Glen Oak avenue (formerly Bluff street) from Main street, the initial point, to Spring street.

Indiana avenue (formerly Weber street) from Glen Oak avenue the initial point, to Behrens avenue.

Wisconsin avenue (formerly Buckner avenue) from Glen Oak avenue, the initial point, to Nebraska avenue.

South Orange street from Main street, the initial point, south to alley in block 6 Moss addition.

North Orange — from Main street, the initial point, to Chambers avenue.

South Douglas street, from Main street, the initial point, to Moss avenue.

798*x* North Douglas street, from Main street, the initial point, to Chambers avenue.

Fayette street, from Knoxville avenue, the initial point, to alley between Glendale avenue and Perry avenue.

Chestnut street from alley between Warner avenue and Adams street, the initial point, to the alley between Washington street and Water street.

Brotherson street from Spencer street, the initial point, to Steubenville street.

Saratoga street from Brotherson street, the initial point, to Bradley avenue.

Steubenville street from Ketelle street, the initial point, to Prairie street.

Warner avenue from Persimmon street the initial point to Lincoln avenue.

Butler street, from Brotherson street, the initial point to Western avenue.

Widenham street from Steubenville street, the initial point, to Warren street.

Kettelle street from Steubenville street, the initial point, to Warren street.

Martin street, from Stebuenville street, the initial point, to Allen street.

Smith street from Stebubenville street, the initial point, to Western avenue.

Howett street from Brotherson street, the initial point, to Warren street.

Bradley avenue, from Saratoga street, the initial point, to University street.

Underhill street from Bradley avenue, the initial point, to Russell street.

798*y* South Bourland street from Main street, the initial point, to Bradley avenue.

North Bourland street from Main street, the initial point, to Russell street.

South Frink street, from Main street, the initial point to Bradley avenue.

Jackson street, from Glen Oak avenue, the initial point, to alley between Glendale avenue and Perry avenue.

Bluff street from Main street, the initial point, to Sanford street.

Sanford street from Bluff street, the initial point, to Seventh avenue.

Monson street from Bluff street the initial point to Seventh avenue.

Adams street from Hamilton street, the initial point, to the line of the alley dividing block 9 in original town of Peoria.

Hamilton street from the alley lying between Adams street and Washington street, the initial point, to Adams street.

Alley dividing block and lying between Hamilton street and Fayette street from Adams street, the initial point, to Jefferson street.

Nebraska avenue from Knoxville avenue, the initial point, to California avenue.

Eaton street from the alley lying between Washington and Water streets, thence north along said Eaton street, the initial point, to the line of the alley between Adams street and Washington street.

Pennsylvania avenue, from Knoxville avenue, the initial point, to Indiana avenue.

798 Cass street from Adams street the initial point, to Water street.

Washington street, from Cass street, the initial point, to Lisk street.

Garden street, from Adams street, the initial point, to Western avenue.

Western avenue from Adams street, the initial point, to alley lying between and dividing the block between Fredonia avenue and Barker avenue.

Alley dividing blocks and lying between Callender avenue and Ayers avenue from center of the main alley in block 15, Callender & Ayer's addition, the initial point, to Western avenue.

Alley dividing blocks and lying between Barker avenue and Callender avenue from Malvern street, the initial point, to Western avenue.

Millman street, from Brotherson street, the initial point, to Linden street.

Alleys in block 3, Buckner addition from Indiana avenue, the initial point, to north limits of said block 3.

Chambers avenue from Elizabeth street, the initial point, to North Garfield avenue.

Alleys in block 2, Buckner's addition, between California avenue and New York avenue, from Nebraska avenue, the initial point, to south limits of alley.

Alley in block 1 Pierce place between Missouri avenue and California avenue from Nebraska avenue, the initial point, to south limits of alley.

Alley between Knoxville avenue and Dechman avenue from Nebraska avenue, the initial point, to Ravine avenue.

Alley between Dechman avenue and Peoria avenue from Nebraska avenue, the initial point, to south limits of said alley.

798& Alleys in block "A" McClure's addition between New York avenue and California avenue.

Alley dividing blocks and lying between Illinois avenue and Pennsylvania avenue, from Knoxville avenue, the initial point, to Peoria avenue.

Alley dividing blocks 4, 5, & 6 in Smith Frye's addition from Knoxville avenue, the initial point, to Missouri avenue.

Alley in blocks 1 and 2 Smith Frye's addition between Indiana avenue and California avenue.

Alleys in block "B" McClure's addition between Indiana and New York avenues.

Seventh avenue from Saratoga street, the initial point, to Western avenue.

Greenleaf street from Jackson street, the initial point, to Wayne street.

798aa Also the right and authority to connect the same with mains, pipes, feeders and service pipes that may be laid or maintained in and along any other streets, avenues, or public highways in said city for the purposes aforesaid.

SECTION 3. The grantee herein shall enter in a bond in the penal sum of one thousand dollars, with sufficient surety (which surety may be a corporation organized to do a surety business) the same to be approved by the mayor and comptroller, conditioned to keep the city harmless from all damages of every kind and nature occasioned by the said grantee and to indemnify all persons or corporations damaged or injured by reason of the negligent acts of said grantee in and about the exercise of the rights and privileges herein granted.

SECTION 4. This ordinance is granted upon the condition that said company shall, within six months from the date of the acceptance of this ordinance, begin the construction of gas works within the city of Peoria and shall, within eighteen months from the date of the acceptance of this ordinance, begin to manufacture and supply gas hereunder: Provided, however, that at the time during which any legal proce-dings shall be pending whereby the said company, its successors and assigns, shall be prevented from or delayed in complying with the requirements of this section, shall not be taken or deemed any part of the time specified.

Said company shall, within thirty days from and after the passage of this ordinance, deposit with the city treasurer of the city of Peoria, the sum of five thousand dollars as security for its faithful compliance with the provisions of this section of this ordinance, which sum so deposited, shall be returned to said company when it shall have expended the sum of fifty thousand dollars in and about the purchase, construction and erection of its said gas works. Should said company fail to commence the erection of its said gas works,

798bb or fail to supply gas within the time mentioned herein, then the city council may, by resolution declare the said sum of five thousand dollars forfeited to the said city of Peoria.

SECTION 5. Said company shall, when so ordered by a
vote of all the aldermen elected, extend their mains on a
avenue, or other public highway contiguous to the main
company at the time in use and operation; provided, howe
said company shall not be required so to extend its mains
company shall receive a good and sufficient guarantee
amount of annual revenue to be derived by said company f
extension shall not be less than the sum of one hundred d
five hundred feet of main extension so ordered.

SECTION 6. Said company shall do no permanent injur
street, sidewalk, alley or public place, and when said compa
open ground in any street, it shall forthwith restore the str
ment and sidewalk to a condition equally as good as befo
expense of said company. Where the streets and avenue
city of Peoria have been permanently paved prior to the
placing of any gas mains therein by the said Peoples' Gas a
tric Company, its successors or assigns, said Peoples' Gas a
tric Company, its successors or assigns shall, when, in its j
the same shall be practicable, lay all such gas mains in and
the alleys, thereby so far as practicable avoiding the nece
disturbing said permanent pavements; and when in the ju
of said company, its successors or assigns, it shall be deem
sary to make any extension in any street, avenue or publ
which shall be permanently improved either by paving or
cmizing, the said company shall first secure a permit for t
pose from the commissioner of public works of this city.

Whenever any street is about to be permanently impr
paving or macademizing the commissioner of publi
798cc shall notify said company of such proposed improvem
within sixty days after such notification, said compa
lay its mains, including all service pipes and connections to
line at its own cost and expense.

SECTION 7. The rights and privileges hereby granted by t
nance are granted for the term of ninety-nine (99) years f
after the acceptance of this ordinance.

SECTION 8. This ordinance shall take effect and be in for
and after its passage and the acceptance thereof by said c
and the filing and approval of the bond herein required.

Passed in council this 18th day of April, A. D. 1899.

JOHN WARNER, M

ROBT M. ORR, *City Clerk.*

STATE OF ILLINOIS, }
County of Peoria, } ss:

I, Robert M. Orr, city clerk of the city of Peoria, do hereby
that I am city clerk of the said city of Peoria, and keeper
records of said city, and that the annexed and foregoing is
copy of "An ordinance granting to the Peoples' Gas and

Company the right to lay gas mains and pipes, and distribute gas in and along the several streets and highways in the city of Peoria, Illinois," of which it purports to be a copy as the same appears among the records of my office.

Witness my hand and the official seal of said city this 9th day of January, A. D. 1902.

[MUNICIPAL SEAL.] ROBT M. ORR, *City Clerk.*

798*dd* EXHIBIT "17." I. C. Pinkney, Master.

An Ordinance.

An ordinance regulating and fixing the maximum price of gas in the city of Peoria.

Be it ordained by the city council of the city of Peoria:

SECTION 1. That the maximum price of gas furnished the city of Peoria, and the citizens thereof, and all consumers of gas therein, shall not exceed the sum of seventy-five cents (75c.) per thousand cubic feet; such gas so furnished to afford a light of not less than eighteen (18) candle power; to be measured and ascertained at the place of consumption, in said city, by the modern appliances known to science for measuring the candle power of illuminating gas; and the Peoria Gas Light & Coke Company, and the Peoria Gas & Electric Company, and any other company corporation person or persons who are now or may hereafter furnish gas to consumers in the city of Peoria, are hereby authorized and empowered to charge all consumers of gas in said city a sum not in excess of seventy-five (75c.) cents per thousand cubic feet.

SECTION 2. That any company, corporation, person or persons who shall in violation of the provisions of the preceding section charge or require the city of Peoria, or any citizen thereof, or any consumer of gas therein to pay for gas furnished to it or them, or either of them, a sum in excess of seventy-five cents (75c.) per thousand cubic feet, or who shall furnish to said city of Peoria, or any citizen thereof, gas less than eighteen (18) candle power, shall be subject to a penalty of not less than twenty-five ($25) dollars nor more than two hundred ($200) dollars for each and every offense.

798*ee* SECTION 3. That any company, corporation, person or persons who shall remove any meter or meters from the house, store, factory or premises of any consumer of gas in the city of Peoria, against the will and consent of any such consumer of gas who is willing to pay for gas furnished him, it or them by any company corporation, person or persons, the price established and fixed in section one (1) of this ordinance shall be subject to a penalty of not less than twenty-five ($25) dollars nor more than two hundred ($200) dollars for each and every offense; provided, however, that any company, corporation, person or persons furnishing gas to consum-

ers in the city of Peoria, shall have the right to remove any meter or meters for the purpose of repairing the same, on condition that such meter or meters so removed shall be replaced or a new one substituted in its place within twenty-four (24) hours of the time of the removal of any such meter or meters.

SECTION 4. This ordinance shall be in force and effect from and after its passage and due publication, as provided by law; provided, that nothing herein contained shall impair the obligation of any contract in existence between the city of Peoria and either of said gas companies above mentioned.

SECTION 5. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed, subject to the proviso contained in section four (4) of this ordinance.

Passed in council this fourth (4) day of September, A. D. 1900.

[MUNICIPAL SEAL.] HENRY W. LYNCH, *Mayor.*

Attest:

ROBT M. ORR, *City Clerk.*

798*ff* STATE OF ILLINOIS, }
City and County of Peoria, } *ss:*

I, Robert M. Orr, city clerk of the city of Peoria, do hereby certify that I am city clerk of the said city of Peoria, and keeper of the records of said city, and that the annexed and foregoing ordinance is a true copy of an ordinance regulating and fixing the maximum price of gas in the city of Peoria, Illinois, passed in the city council fourth (4) day of September A. D. 1900, of which it purports to be a copy, as the same appears among the records of my office.

Witness my hand and the official seal of said city this twelfth (12) day of September, A. D. 1900.

[MUNICIPAL SEAL.] ROBT M. ORR, *City Clerk.*

Revenue stamp 10 cents.

(Here follows map marked page 798*gg*.)

No 269
Peoria Gas & Electric Co
of
Peoria
Ap 798 97

MAP OF THE CITY OF PEORI

FOLD OUT IS TOO LARGE TO BE FILMED

798*hh* Vol. 4. Schedule "B." Israel C. Pinkney, Special Master.

Filed Jun- 3, 1903. Marshall E. Sampsell, Clerk.

798*ii* UNITED STATES OF AMERICA, *Northern District of Illinois, Southern Division,* } *ss:*

The President of the United States of America to the marshal of the northern district of Illinois, Greeting:

You are hereby commanded to summon Theodore J. Miller, Robert D. Clarke, Sumner R. Clarke, Benjamin Warren Jr., Henry Sandmeyer, George Littlewood, Oliver J. Bailey, Ford Luthy, Philo B. Miles, Frank T. Corning if *he* be found in your bailiwick, to be and appear before me, I. C. Pinkney, special master for the northern district of Illinois, aforesaid, at the United States court rooms in the city of Peoria, on the *on the* 19 day — February 1902 at 10 a. m., to give testimony, and the truth to say, in a case pending before me, wherein The Peoria Gas and Electric Company is complainant, and City of Peoria is defendant.

Hereof fail not, under the penalty of the law, and have you then and there this writ.

Given under my hand, this 11th day of February A. D. 1902.

I. C. PINKNEY,
Special Master.

798*jj* *Marshal's Return.*

Received this writ Feb. 15, 1902, and I have served the same by reading the same to and in the presence and hearing of the within named Mr. Oliver J. Bailey, Mr. Henry Sandmeyer, Jr. Ben Warren Jr., Mr. Theodore Miller, Mr. Sumner Clark, Mr. Geo. Littlewood, Mr. Philo B. Miles, Mr. Frank Corning, Mr. Rob't Clark or by leaving a certified copy thereof with each of them personally. The other person within named not found.

THOS. POWERS, *Police,*
By —— ——, *Deputy.*

Marshal's fees and costs on this writ $—.

798*kk* UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Southern Division, }

The President of the United States of America to the marshal of the northern district of Illinois, Greeting:

You are hereby commanded to summon Ferd Luthy if he be found in your bailiwick, to be and appear before me, I. C. Pinkney, special master for the northern district of Illinois aforesaid, at United States court rooms in the city of Peoria, on the 20th day of February 1902, at 2 o'clock p. m., to give testimony, and the truth to say, in a case pending before me, wherein The Peoria Gas & Electric Company is complainant, and City of Peoria defendant.

Hereof fail not, under the penalty of the law, and have you then and there this writ.

Given under my hand, this 19th day of February, 1902 A. D.

I. C. PINKNEY,
Special Master.

[Endorsed:] United States district court. The Peoria Gas and Electric Company *vs.* City of Peoria. Subpœna. Returnable —. Returned and filed ——.

Marshal's Return.

Received this writ 20th Feb. 1902, and I have served the same by reading the same to and in the presence and hearing of the within named Ferdinand Luthy or by leaving a certified copy thereof with each of them personally. The other person within named not found.

THOS. POWERS, *Police,*
By —— ——, *Deputy.*

Marshal's fees and costs on this writ $—.

799 UNITED STATES OF AMERICA, } ss:
State of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY } Defendant's Testimony.
vs. } Volume 4.
CITY OF PEORIA. }

Testimony taken in the above entitled cause for and in behalf of the defendant herein, before Judge I. C. Pinkney, special commissioner, at the United States court room, Government building, in the city of Peoria, Illinois, on the 11th, 19th, 20th, 21st, 22d, and 25th days of February, A. D. 1902, and on the 10th, 11th, 12th, and 13th days of March, A. D. 1902, as set forth in the following pages.

Index to Witnesses, Vol. 4.

Names.	Direct.	Cross.	Re-D.	Re-cross.
Corning, Frank T.....	801.			
Sandmeyer, Henry.....	830	850	851	851
Clarke, Robert D.....	852	871		
Miller, Theo. J.....	873	958	959	961
Littlewood, Geo. H.....	963	1000	1000	
Warren, Jr., Benjamin.....	1001			
Bailey, Oliver J.....	1031			
Miles, Philo B.....	1049			
McFadden, Lewis A.....	1083	1089	1092	
Powell, David E.....	1092	1099	1100	
Clarke, Sumner R.....	1100	1155		
Thode, John.....	1157	1163	1166	
Carroll, W. H.....	1167	1173	1176	
Wolschlag, Stephen.....	1177	1186		
Kellerstrass, Robert.....	1188	1194	1196	
Peck, James D.....	1197.			

Charter, complainant company etc., at close of volume.
Peti-on to city council (Exhibit 19) page 819.

800 United States court room, Government building.

PEORIA, ILLS., TUESDAY, *February* 11, 1902—10 a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin, Mr. E. C. Ritcher, Mr. W. T. Abbott, appearing for complainant. Mr. Henry Mansfield, Mr. F. H. Tichenor, appearing for defendant.

On account of the illness of Mr. F. W. Little, who the defendant desired to first examine for the purpose of laying the foundation for other testimony, and on account of the fact that Mr. Tichenor had but recently become associated with Mr. Mansfield in the defense and had not become familiar with the case, and because of the further fact that Mr. Tichenor had an important case on call in the circuit court of Peoria county the further hearing of this case was adjourned by the master until Wednesday, February 19, 1902, at the hour of 10 o'clock a. m., the master stating that at that time the hearing must proceed unless a further extension was granted by the court.

801 United States court room, Government building.

PEORIA, ILL., WEDNESDAY, *February* 19, 1902—10 a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner, Mr. W. J. Irwin, Mr. E. C. Ritcher, Mr. W. T. Abbott, appearing for complainant Mr. Henry Mansfield and Mr. F. H. Tichenor appearing for defendant.

Defendant's counsel offers in evidence from the records of Peoria county, Illinois, a certified copy of the charter and the articles of incorporation granted to the complainant company together with the certificate of the recorder attached thereto, which said document is hereto attached marked by the master "Exhibit 18."

FRANK T. CORNING, called on behalf of the defendant, being first duly sworn, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. State your name and place of residence.
A. Frank T. Corning, Peoria, Ill.
2. What is your business?
A. Distiller.
3. How long have you been a resident of Peoria, Ill.?
A. Since 1880.
4. Have you been engaged in the distilling business substantially all the time you have been a resident of Peoria?
A. I have.
5. Where has your place of business been during that period?
A. Foot of Sanger street.
6. With what company or companies in the distilling business have you been associated or identified during the period covered by your statement?
A. Monarch Distilling Company and Corning Distilling Co.

802 7. Those institutions are both in that locality, are they?
A. Yes sir.

COPY BOUND CLOSE IN CENTER

8. With what company or companies are you connected or associated with at the present time in that line of business?

A. Corning Distilling Company.

9. Is Corning and Company also in existence as a corporation?

Ans. Yes sir.

10. And in the prosecution of business?

Ans. Yes sir.

11. What official connection, if any, have you at the present time with Corning and Company?

Ans. I am its president.

12. How long have you occupied that position?

A. I should say since 1895.

13. What official connection, if any, have you with the Corning Distilling Company?

A. I am its president.

14. When was that company organized?

A. I should say about last June or July.

15. How old an organization is Corning and Company?

A. Since 1893.

16. Both of those organizations are incorporated under the laws of the State of Illinois, are they not?

Ans. Yes sir.

17. State whether or not you were a subscriber to the capital stock of the People's Gas & Electric Co., now the Peoria Gas & Electric Co., prior to the time of its organization?

A. I was.

18. Are you the same F. T. Corning whose name appears at the head of the list of stockholders in Exhibit "18" offered in evidence in this case?

Objected to by complainant as assuming the witness is now a stockholder.

A. I am.

803 19. State whether or not you took the stock for which you subscribed in the organization of that company?

A. I did.

20. Are you and have you been since its organization a stock holder in the People's Gas & Electric Co. and later the Peoria Gas & Electric Co.?

Objected to by complainant as incompetent and immaterial.

A. Yes sir.

21. Prior to the time you became interested in the complainant company, what, if any, experience had you had in the gas industry in Peoria or elsewhere?

Ans. None whatever.

22. What, if any, knowledge had you of the expense, operation and production of gas in the ordinary way as used for illuminating and heating purposes?

Ans. None.

23. About when did you commence your investigations with reference to becoming interested in the complainant company?

A. I made no investigation at any time.

24. How long prior to the time you became a subscriber for stock in the company in question did you have any negotiations with respect to becoming a stock holder or interested in any way in that company?

Objected to by complainant as incompetent and immaterial.

The MASTER: I do not see the materiality of it but the witness may answer subject to the objection.

A. I do not remember but it was not a long time.

25. Through whose intervention or suggestion, if anybody's, did you begin your inquiry or negotiations which culminated in your becoming a subscriber as mentioned?

Objected to by complainant same grounds.

A. That is a hard question for me to answer because several of my friends came to me with regard to it but I don't remem-
804 ber who they were.

26. Do you at the present time remember who any of them were?

A. No, I cannot recall any of them definitely.

27. Do you remember at this time who any of the other subscribers for stock in complainant company were at the time of its organization?

Objected to by complainant as incompetent, immaterial and not the best evidence.

A. There was Mr. Miller, Robert Clarke and Chauncey Clarke, I recall now; those are all I recollect now.

28. Are you able to state how long prior to the time you became a subscriber you had conferences with any of those gentlemen with respect to the subject matter?

A. I do not think I had any conferences whatever.

29. Where did you see them on the occasions you have indicated?

Ans. That I don't remember.

30. State whether or not within your recollection any of the people who subsequently became interested with you in the company in question called on you at your place of business with reference to becoming a stockholder, or a subscriber to stock in that company?

Ans. They did not.

31. Do you know Sumner R. Clarke, of Peoria?

Ans. Yes.

32. How long have you known him?

Ans. 30 years.

33. State whether or not you have ever been associated with him in business in Peoria or elsewhere?

A. Not unless in this gas company.

34. What, if any, conversation did you have with Mr. Sumner Clarke prior to the time you subscribed for the stock in question?

A. I don't remember of having any conference with him about it; I may have had but I don't recall it.

35. How long has Sumner R. Clarke been a resident of Peoria?

805 A. That I don't know.

36. Has he for a great many years?

Ans. Oh yes.

37. And has been interested in various lines of business in Peoria, has he not?

Ans. So I understand.

38. Is Mr. Clarke a man who is well known in Peoria and has been for a great many years?

Ans. I should say so.

39. State whether or not you were present at a meeting of the stock holders called for the purpose of perfecting the organization of complainant company?

A. I don't remember whether I was or not.

40. Are you able to state at this time whether or not you were present at any meeting of the stock holders prior to the completion of its organization?

Ans. No, I cannot.

41. State whether or not you received any notice of the meeting called for the purpose of perfecting the organization in question?

Objected to by complainant as incompetent and immaterial.

A. I do not recall it but I presume I did receive such notice if it was issued.

42. Where were you in the months of January, February and March, 1899?

A. I cannot answer that but presume I was in Peoria.

43. Did you know of the completion of the organization of complainant company about the time it was accomplished?

A. No I cannot answer that.

43. State whether or not you participated in any meeting of the stock holders, or subscribers, to the stock of that company at the election of directors during the early spring of 1899?

A. That I don't remember.

44. State whether or not you have ever been a director or officer in the complainant company?

Ans. I have been a director.

806 45. When were you elected and for how long a period of time were you such director?

A. I think I was on the first board and think that board was elected for a year, but I am not sure as to that.

46. Are you still a director of complainant company?

A. No sir, I am not.

47. How many terms did you serve?

Ans. I don't remember.

48. State how many, if any, directors' meetings of that co you attended during the time you occupied that position with ence to it?

A. I cannot answer that; I don't know.

49. Did you attend any of them?

A. Yes, I attended a few—not many.

50. What, if anything, was the company doing during the you were a director as you have testified?

A. That I cannot recall.

51. What, if any, knowledge did you as a director have business of the company during the time you were acting i capacity?

Ans. I might say none whatever.

52. That is, you had no knowledge whatever of the business done?

A. No sir; I did not attend enough of its meetings and I wa at those I did attend and I knew very little of their business a

53. How many directors were there on the board at the time were a member?

Ans. That I don't know.

54. Who were some of them, if you remember?

A. Mr. Sumner Clarke; Theodore J. Miller; I think Ben W and myself; whether Mr. Little, the present manager of comp ant company, was a member of that board or not I don member.

807 55. How frequently, during the time you were a dir were directors' meetings of that company held?

A. That I don't remember.

56. Where were the meetings held?

A. To the best of my recollection at the office of the gas comp on Main street; I don't remember the number; it was at thei office before they moved, just below Anthony's Loan & Trust pany between Madison and Jefferson streets.

57. Do you know whether or not the company was engage construction work during the time you were a director?

A. I think it was.

58. Do you know about the time that work was commenced?

A. No.

59. What, if anything, did the board of directors have to do the work of construction?

Objected to by complainant as immaterial.

A. I don't know.

60. What, if anything, did the directors have to do with au ing, passing or approving accounts for construction during the t you were connected with the company in the capacity you h mentioned?

Objected to by complainant as immaterial.

A. I don't know.

61. What, if any, discussions were had at any of those meetings in your presence with respect to construction work, or the cost of construction, or the general plan of construction?

A. I heard none.

62. Does your answer cover the whole period of time you were a director of that company?

A. It covers all the meetings I attended.

63. What was the character, in a general way, of the business transacted at those directors' meetings?

808

A. That I don't remember because I attended so few of them.

64. About how many meetings did you attend during the first year of the existence of the company?

A. During my term of office I don't think I attended over three or four meetings.

65. In what part of the year were those meetings, if you recollect?

Ans. I do not recollect.

66. What is the character of your memory in general with respect to the business which you ordinarily transact—is it good or otherwise?

A. If I am sufficiently interested to make it an object, perhaps my memory would be better, but this was a small interest I had and I did not bother much with it or pay much attention to it.

67. Through whose influence, if anyone's, did you originally become a subscriber to the capital stock?

A. The subscription was made on my part more from the class of men going into it; I don't know that any individual influenced me in any way.

68. Through what channel did you obtain information to the effect that such a company was about to be organized?

A. That I don't remember.

69. In what way did you learn the names of the gentlemen who were to be associated with you as subscribers to th estock?

A. That I don't remember.

70. Are you able to state at this time how many of the others had signed the subscription list at the time you attached your name?

A. Well, that would be answered likely by the subscription book where I signed.

71. Is it not true you were the first subscriber to the stock book?

Ans. That may be, I don't remember.

809

72. State whether or not prior to the time you became a subscriber you had attended any meetings, or had any conferences, with others proposing to become subscribers to the stock of that company?

A. I may have done so but I don't recall it.

73. Through what source did you receive advice as to the gent
men who were intending to become interested in the company?

A. I don't know that unless through general conversation in
general way.

74. Have you at this time no recollection whatever as to peop
with whom you conversed touching the matter of the organizatio
of this company and there interests and its outcome?

A. Yes sir, I have talked with Mr. Miller and Mr. Sumner Clark
both occasionally.

75. What, if any, representations did they make to you with r
spect to the probable outcome of an investment of the characte
which it was proposed to make?

Objected to by complainant as incompetent and immaterial.

The MASTER: I do not see its materiality but the witness ma
answer subject to the objection.

A. My recollection is they thought it was a good investment.

76. What, if any, business experience had Sumner R. Clarke ha
at that time generally?

A. He had had a large experience.

76. In what lines of business had he been engaged and how ex
tensively?

A. That I don't know; he had been in the distilling business bu
I think he had retired from that at that time; I don't think he wa
in it although he might have been.

77. Do you know in what business he was then engaged?

A. I don't think at that time he was in any business par
810 ticularly.

78. Is it or is it not true that he has for a number of years
been very largely interested in real estate transactions?

A. I don't know.

79. I think you have testified that you have never been associ-
ated with him in any business in any way?

A. No sir.

80. Is it not true that Samuel R. Clarke was at that time a man of
very large means and was then, or had been, interested in very
large enterprises on his own account?

A. I presume that is true.

81. Mr. Clarke was at that time a man past middle life some-
what?

A. That I don't know but I suppose so.

82. During what portion of the time you have known Sumner R.
Clarke has he been actively engaged in business within your knowl-
edge?

Ans. You might say always.

83. In what locality, or localities, have his business interests been
during the time you have known him?

A. That I don't know.

84. Has he or not ever been interested in enterprises in Peoria?
Ans. I have understood he has been.
85. Where was his distilling interest at the time he was so engaged?
A. He was interested in the Manhattan distillery at Peoria.
86. Is it not true that during the time Sumner R. Clarke was engaged in the distilling business tha you, as a distiller, frequently came in contact with him in a business way?
A. Yes sir.
87. That covered a considerable period of time, did it not?
A. Yes sir.
811 88. Is it not also true that he was prominently identified with the distilling interests here for a great many years?
A. Yes sir.
89. And that he subsequently retired?
A. Yes sir, that is, I presume he retired.
90. He has not been engaged in that business for some years, has he?
A. No, he has not been known as being engaged in it but he may be.
91. Do you know what position, if any, he occupies in the complainant company at the present time?
A. I do not.
92. Do you know what position he has ever occupied in that company?
Ans. He was president of the company at one time.
93. Was that during the time you were a director?
A. Yes sir.
94. State whether or not as such president he presided at the meetings of the directors which you attended?
A. He has presided at some.
95. But not at all of them?
Ans. No not at all of them.
96. Who was the other presiding officer during any part of the time you were a director?
Ans. I don't remember.
97. Are you, or are you not, able to state at this time the character of business which was transacted or discussed at any of the meetings you attended during the time you were a director in that company?
Ans. No, I don't remember.
98. How long were those meetings or any of them in session?
A. Perhaps an hour or an hour and a half—perhaps half an hour; I was generally late at those meetings and don't know how long they were in session.
99. On how many different occasions did anybody interview
812 you prior to the time that you agreed to become a subscriber to the capital stock of complainant company?
A. I don't think I was interviewed at all.

100. Then do I understand you to say that the first knowledge you had of the organization of the company, or of its intentions was when the stock subscription list was presented to you and you signed it?

A. No sir, it was talked of in a general way before but nobody interviewed me, that is, sought me at my office or anything of that kind.

101. Where were these general discussions at and under what circumstances?

Ans. I don't remember.

102. Were they in the nature of meetings or otherwise?

A. They were otherwise; there were no meetings that I recall.

103. State whether prior to the time you so subscribed you called on Sumner R. Clarke at his office in Peoria, or at any other place, for the purpose of discussing with him the proposed incorporation of this company?

A. I may have done it but I don't recall it.

104. Where was Mr. Clarke's office during that time?

A. No. 211 Main street near the Merchant's national bank.

105. That has been this place of business for a number of years, has it?

Ans. Yes sir.

106. What degree of intimacy during the past years has existed between you and Sumner R. Clarke?

Objected to by complainant as immaterial.

A. I have known Mr. Clarke well for 30 years.

107. And your relations with him have been intimate, have they not during that time both socially and in business?

A. Not recently; not within the last year.

108. Are you able to state at this time from whom, or
813 th-ough what channel, you first received any suggestion with reference to the proposed incorporation of a new gas company in Peoria at that time?

Ans. No, I am not.

109. State whether or not during the time you have been a resident of Peoria you have been engaged in any industries other than distilling?

Objected to by complainant as immaterial.

A. Yes sir, in four.

110. Do I understand your answer to be that those other industries were in no way connected with the distilling industry or rectifying interests?

Ans. Yes, outside of that.

111. About when in point of time were you so interested?

A. Oh these interests have varied in time; I could not answer that question just now.

112. Were they during the early portion of your residence in Peoria or later?

Ans. Oh, the last 12 years all of them.

113. For how long a period of time did those interests continue?

Objected to by complainant as immaterial.

A. They are in force still.

114. What, if anything, had any of those other enterprises mentioned to do with the gas industry?

A. I have counted the gas industry among the four; that is one of the four.

115. Were any of the other three outside interests which you have mentioned in any way connected with gas industries?

A. None whatever.

116. Then this was your only investment or interest of any character in gas industries up to this time?

Ans. Yes sir.

117. In a general way what was the character of those other three companies in which you were interested?

814 Objected to by complainant as incompetent, immaterial irrelevant.

The MASTER: I don't think it competent but the master has not the power to exclude it.

Mr. RITCHER: Then we instruct the witness that he does not have to answer unless he wants to.

The MASTER: The master does not like to see those matters come up in that way.

Mr. RITCHER: If the master will not rule we have to do it.

The MASTER: The master cannot rule on the competency of questions, he can simply allow the witness to answer subject to the objection.

The WITNESS: None of my interests in the other three industries are in any way connected with the gas business or with any gas interests or never have been, or supplying gas companies, or anything else in any way.

118. During any time from the beginning of negotiation touching the proposed investment and continuing through the period you were a director in complainant's company, what, if any, discussions were had between you and your associates or those proposing to become interested in this company, with respect to the effect of competition in the gas industry in Peoria.

Objected to by complainant as incompetent and immaterial.

A. None that I recall.

119. What, if any, knowledge did you have at that time with respect to competition, or attempted competition, in the same direction in other cities in the United States?

Objected to by complainant same grounds.

A. I had none.

120. Were you or not familiar, in a general way, with the mode of distributing gas to consumers in cities, that is to say, you understood the general plan of distribution did you not?

A. Yes sir.

121. In Peoria at that time for what purposes was gas used?

A. For illuminating and fuel purposes.

122. State whether or not there was then a gas company in operation in the city of Peoria?

Objected to by complainant same grounds.

A. There was.

123. Do you know what its corporate name was?

A. I think the Peoria Gas Company, if I recollect right.

124. There was only one, was there?

A. So far as I know.

125. And that was the only one that had been in operation during your acquaintance with the city?

A. So far as I know.

126. Do you know what territory was reached for service by that company?

Objected to by complainant as immaterial.

A. I do not.

127. Do you know in a general way whether or not it covered the city of Peoria and its environments?

Ans. I presume it did.

128. How long had you been a consumer of gas from that company?

A. I have taken gas from that company ever since I have lived here, 22 years.

129. Do you know whether or not that was the only gas company that had ever been operated in the Peoria territory?

A. It was the only one I knew of.

130. Did you or did you not know the men who were interested in that company as officers and stock holders?

A. No, but I knew some of them; I knew Mr. Henebery, Mr. Coffey and Mr. Farrelly.

131. Did you know Wm. A. Herron?

Ans. No.

132. Did you know Mathew Griswold in his lifetime?

A. Yes.

133. Did you know Peter Coffey in his life time?

A. Yes.

134. Do you know Leslie Robison?

Ans. Yes.

135. All of those gentlemen were for many years interested prominently in the old gas company, were they not?

A. I recall the ones you have named now; I had forgotten about them.

136. Is it not true you have done more or less business with those gentlemen?

A. I have taken gas from the old company ever since I have been here; that is the only business I have had with them.

137. Is it not true that Mr. Henebery was at one time a distiller in Peoria with large interests here?

A. That was before my day here.

138. What, during the years you knew the gentlemen mentioned, was their standing and financial ability?

Objected to by complainant as immaterial, incompetent and irrelevant.

The MASTER: I don't see the materiality of it but the witness may answer subject to the objection.

A. Well, personally I don't know only from rumor that it was good.

139. Were they men of large or small means?

Objected to by complainant same grounds.

A. Personally I don't know but I presume they were large; I presume they were all men of large means.

140. What has been Mr. Herron's business during the years you have known him?

817 Objected to by complainant as immaterial.

A. I don't know Mr. Herron even by sight.

141. Do you know in what line of business he is now and has been engaged?

Ans. No, I don't know his interests any of them.

142. State if you don't know Wm. A. Herron of Peoria, the president of the Savings Bank of Peoria and have so known him for the past 20 years?

A. I wish to correct my former answer; I did meet Mr. Herron once, I had forgotten that; I met him at a summer resort some three or four years ago; that is all my acquaintance with Mr. Herron.

143. Interrogatory 142 repeated.

A. I can answer that yes.

144. What, if anything, is Mr. Henebery's official connection with the First National Bank of Peoria?

Objected to by complainant as incompetent, immaterial, irrelevant.

A. I don't know; I understand he is an officer of that bank but I am not sure of it.

145. You have done business with the First National Bank of Peoria for a great many years, have you not?

A. No sir. We did business with the First national when we fir
came here for perhaps 10 years, but we have not done any busine
with them since until about 6 months ago.

146. During the period covered by your residence in Peoria up t
the time of the organization of the company in question, what,
any, other franchise had been granted to gas companies for the pur
pose of construction in Peoria?

Ans. I don't know.

147. What, if any attempt, within your knowledge had been mad
during that time to obtain a franchise in Peoria for the purpose o
establishing another gas industry here?

A. I don't know that.

818 148. What, if any, connection have you ever had with the
city government of Peoria?—officially I mean?

Ans. None whatever.

149. You have never been in the council?

Ans. No sir.

150. What, if any, changes have been made in the price of gas to
consumers during the time you have been a resident of Peoria?

A. That I cannot answer.

151. In the month of March 1899, was the price higher or lower
than it was when you first became a resident of Peoria?

A. I don't remember.

152. Do you know what the price was in the month of March
1899?

Objected to by complainant as immaterial.

A. No.

153. Look at the paper now shown you and state whether or not
it bears your genuine signature?

Ans. Yes sir.

154. Will you please read that paper into the record and make it
part of your testimony in this case?

Complainant objects to the witness reading it as part of his tes
timony.

The MASTER: I don't think it competent to offer it that way.

Mr. TICHENOR: This paper is the original on file with the city
clerk and we do not want to offer it in evidence; we expect to offer
a certified copy of it if the complainant will admit it is part of the
files in the office of the city clerk.

Mr. IRWIN: If this paper is marked for identification and offered
in evidence the complainant will admit it is part of the files of the
city of Peoria and a certified copy of the paper may be substituted
for the record, but we will object to it as incompetent evidence in
the case.

Defendant's counsel offers in evidence a certified copy of the
paper identified by the witness together with the certificate of the

city clerk thereto attached, which said certified copy is marked
819 Exhibit "19," as is also the original paper shown the witness.

Objected to by complainant as incompetent, immaterial and irrelevant under the issues in this case. (Admitted subject to the objection.)

Whereupon said paper was read to the master in the words and figures following to-wit:

819½ EXHIBIT "19." I. C. Pinkney, Master.

PEORIA, ILLINOIS, *April* 18, 1899.

To the honorable mayor and city council of Peoria.

GENTLEMEN: We have to-day filed with the city clerk additional petitions addressed to your honorable body asking you to grant to People's Gas and Electric Company the right to lay, construct and maintain gas mains and electric wires in the streets and alleys of Peoria, mentioned in the petitions. The petitions which we have filed to date represent the frontage on more than fifty-two miles of streets and in the aggregate, more than three-fourths in value of the real estate situated within the city limits of Peoria.

The signers of these petitions believe that competition will reduce the price of gas and result in saving thousands of dollars yearly to the public of Peoria. That this view is correct is proven by the fact that the mere threat of competition has reduced the price of gas for light twenty per cent., and actual competition will do much more.

We ask for the People's Gas and Electric Company only the right to do business on equal terms with the old company. We propose to build a modern, first-class, strictly up to date plant, the work of constructing which will begin at once when the ordinances now before you have been passed. If favorable action is taken now we shall be prepared to furnish gas to the Peoria public before Thanksgiving day.

The necessary financial arrangements have been made and every detail arranged for beginning work at once.

Thousands of dollars are ready to be paid out to Peoria workingmen, manufacturers and dealers in supplies. We will in all cases give our home people the preference in the employment of labor, and the purchase of material required in the erection of our plant.

819½ This application for the favorable action of your honorable body is made in absolute good faith and the rights if granted to us will not be for sale.

As the work of erecting our plant must be done out of doors and before freezing weather, and as the ordinances are now before you

for final action, we respectfully ask an early and favorable consideration of them.

Respectfully submitted,

S. R. CLARK,
B. WARREN, JR.,
H. SANDMEYER,
C. C. CLARK,
GEO. H. LITTLEWOOD,
CHAUNCEY D. CLARKE,
O. J. BAILEY,
FRED LUTHY,
PHILO B. MILES,
ROB'T D. CLARKE,
F. T. CORNING,
THEO. J. MILLER,
Stockholders People's Gas and Electric Company.

STATE OF ILLINOIS, } ss:
County of Peoria, }

I, Robert M. Orr, city clerk of the city of Peoria, do hereby certify that I am city clerk of the said city of Peoria, and the keeper of the records of said city and that the annexed and foregoing is a true copy of a petition filed on the 18th day of April, 1899, by the People's Gas and Electric Company, of which it purports to be a copy as the same appears among the records of my office.

Witness my hand and the official seal of said city this 20th day of February, A. D. 1902.

[Seal of City of Peoria, Illinois. Chartered A. D. 1845.]

ROB'T M. ORR, *City Clerk.*

820 155. When, with reference to the day Exhibit "19" bears date, did you sign your name to it?

Ans. I don't remember.

156. Was it at or about the time of its date?

A. That I cannot recollect.

157. State whether or not at the time you affixed your signature to it, other names had already been attached.

A. I don't remember but I presume they had judging from where I signed it.

158. State whether or not all of the other gentlemen, whose names are affixed to the document you have identified marked Exhibit "19," were, at the time that paper bears date, interested, or proposing to become interested, in the complainant company.

A. I cannot answer that.

159. State whether or not any of them, other than yourself, were at that time so interested, or proposing to become interested?

Objected to by complainant as immaterial.

A. I cannot answer that because I don't know the date the stock was subscribed for.

160. Does the date which the paper itself bears in any way refresh your recollection with respect to the time when you first proposed to become interested in complainant company?

Ans. No.

161. What were the circumstances under which you affixed your signature to Exhibit "19"?

A. I presume it was because I was a stockholder in the company, but I could not say that was the fact.

162. What were the preliminaries leading up to the signing and presentation to the city council of this paper Exhibit "19"?

Objected to by complainant as immaterial.

A. I could not answer the question.

163. State whether or not prior to the time you signed the paper in question you examined it and read it through.

Objected to by complainant as immaterial.

821 A. I presume I did.

164. At the time you affixed your signature to Exhibit "19" did you or not believe its contents to be true?

A. I believed it to be true of course; I signed it.

165. State whether or not at the time you signed that paper and prior thereto, you expected that the complainant company, if granted a franchise for the construction of a gas plant in Peoria, would carry out in good faith the representations made in that paper?

Objected to by complainant as immaterial.

A. Yes sir;

166. State whether or not it was your judgment at the time you signed that paper and before, that the complainant company would, if granted the franchise, be able to carry out those representations in good faith?

Objected to by complainant as immaterial.

A. Yes sir.

167. Upon what did you base your judgment covered by the last two interrogatories and the answers thereto?

Objected to by complainant as immaterial.

The MASTER: I think it material in view of the affirmative matter contained in the answer in this case.

Mr. TICHENOR: It is, and further than that, we have a right after all our testimony is in, to amend our answer to conform to the proof.

A. I don't recall it more than that the paper was drawn up and signed and I supposed it would be carried out and it may have been for all I know now.

168. Do you know who prepared the paper marked Exhibit "1
A. I do not.
169. Do you remember who presented it to you for your sig
ture?
A. I do not.
170. Do you remember where it was presented to you
822 A. I do not.
171. How many of the persons, whose signatures are
pended to it, were present at the time you signed the paper Exh
"19"?

Objected to by complainant as immaterial.

A. I don't recall.
172. When, with reference to the time you signed the paper,
you first see it?
Ans. That I don't recall.
173. State whether or not it had been presented to you prior
the day on which you affixed your signature to it?
A. That I don't recall.
174. State whether or not within your recollection the subj
matter of that paper, or the paper itself, had been discussed betwe
you and others, or among others in your presence, prior to the ti
you signed it?

Objected to by complainant as immaterial.

A. I don't recollect.
175. Do you say there was no discussion or consideration of
by you with others, or by others in your presence, before y
signed it?
A. I presume there was, but I don't recall it so I can swear to
176. State whether or not you were consulted with reference
the advisibility of preparing and presenting to the city council
paper embodying substantially the material incorporated in Exhi
"19" prior to the time you signed it?

Objected to by complainant as immaterial.

A. I cannot answer it; I don't know that I was consulted.
177. Have you at this time no recollection whatever with refe
ence to the subject matter inquired about?
A. No, it is so long ago I don't remember the details.
178. Have you at this time any recollection whatever with r
gard to this paper, either before or after you signed it, oth
than the mere fact of your examining it and attaching your si
nature?
823 A. That is all.
179. Do you remember any discussion afterwards with r
gard to it?
Ans. I do not.
180. In what way, if at all, did you actively participate in an

efforts that were made to obtain an ordinance granting a franchise or license to the complainant company?

Objected to by complainant as immaterial.

A. In no way at all.

181. State whether or not you were present in the city council at any meeting during the time this ordinance was pending?

A. I was not.

182. State whether or not you were before any committee of the council having this ordinance under consideration, or whether you met any member of the committee during the time the ordinance was pending?

Objected to by complainant as immaterial.

A. I was not before such a committee nor did I see any of the committee individually.

183. State if you knew of the presentation of the ordinance asking for the franchise in question at the time it was presented—did you know at the time of the fact that it was presented?

Objected to by complainant as immaterial.

A. I might have known; I don't recollect it positively.

184. Did you or did you not know at the time you signed Exhibit "19" that the ordinance in question was pending before the city council of the city of Peoria?

Objected to by complainant as immaterial.

A. I might have known it; I don't recollect positively.

185. What, if anything, had you to do with the consideration of the subject matter of the preparation of the ordinance and its leading features?

Objected to by complainant as incompetent and immaterial.

824 A. I had nothing to do with it.

186. When, if at all, did you first see a draft of that ordinance as it was proposed to present it to the council for passage?

A. I don't recollect I ever saw a draft of it; probably the original paper was the first I ever saw of it.

187. You refer to the original ordinance do you?

A. No, Exhibit "19."

188. I am speaking with reference to the ordinance itself?

A. Oh, I never saw any draft of the ordinance.

189. To what extent, if at all, have the directors, or you, participated in fixing the prices charged, or to be charged, by complainant company for gas furnished to the city of Peoria, or its inhabitants or industries?

Objected to by complainant as immaterial.

A. None whatever.

190. What, if any, discussions were had in the directory at any meetings attended by you touching the prices to be charged to consumers?

(Objected to by complainant as immaterial)

A. None that I recall.

191. State whether or not the subject of prices charged, or to be charged to consumers, was under discussion by the directory at any time when you were present in your representative capacity or otherwise?

Objected to by complainant as immaterial.

A. Not that I remember of.

192. Are you able to state at this time any subjects that were considered and passed upon by the board of directors during the time you were a member at any meetings which you attended?

A. I cannot; the minutes will show that I suppose.

193. When, with reference to the time the complainant company began to furnish gas to consumers in Peoria, did your connection as director with the company cease?

825 Objected to by complainant as immaterial.

A. I cannot answer it just as you put the question. I ceased to be a director about 8 or 10 months ago as nearly as I can remember it.

194. For how long a period of time, up to the time you- connection ceased as stated, had complainant company been furnishing has to the citizens of Peoria?

Ans. That I cannot answer.

195. At what prices did complainant company furnish gas to the city and citizens of Peoria and vicinity when it began distribution after the installation of its plant?

Objected to by complainant as immaterial.

A. I don't know.

196. Were you at that time a gas consumer of that company?

A. No, I have never taken gas from the new company.

197. As a director in that corporation did you then, or did you not, know the prices at which gas was being furnished to consumers?

Objected to by complainant as immaterial.

A. I presume I knew but I don't recall the prices.

198. How many gas plants had complainant company during the time you were connected with it in the manner you have explained?

A. Just this plant here so far as I know.

199. You have nothing whatever to do with any other?

Ans. No.

200. Did you, or did you not, know of any changes in the prices

to consumers during the time you were in the directory of that company?

Objected to by complainant as immaterial.

A. I think I knew of some changes but I don't recollect what they were.

201. Are you able to state whether or not the changes referred to by you in your former answer were by way of increase or decrease in the price of gas to consumers?

A. My recollection is it was a decrease.

202. Are you able to state now when, with reference to the
826 time complainant company began to furnish gas, the first decrease occurred?

A. I do not.

203. From recollection at this time are you able to state how many, if more than one, change by way of decrease in price, were made during the time you were a member of the directory of tha company?

A. No I do not.

204. Do you remember whether or not there were more than one?

A. No.

205. During the time you were such director was any change made except by way of decrease within your knowledge?

Objected to by complainant as immaterial.

A. I don't remember.

206. Do you know what the price charged for gas by complainant company was at the time you ceased your connection with it as a director?

Ans. I do not.

207. State whether or not while you were a director of that company the right to fix and change the price of gas furnished to consumers was vested in the board of directors or otherwise?

Objected to by complainant as immaterial.

A. I don't remember.

208. Do you know as a matter of fact who, during that period, or any part of it, did fix the price at which gas should be furnished to consumers?

Objected to as immaterial.

A. I don't know.

209. Do you know Francis W. Little who has for sometime been associated with the complainant company?

Ans. I do.

210. Was he associated with it during the time you were a director?

Ans. He was.

211. During all the time?

Ans. Yes sir;

212. What was his official designation in that organization during the period in question?

827 Objected to by complainant as incompetent and immaterial.

A. As I recall it he was vice president.

213. What were his duties and what did he do as such vice president or otherwise?

(Objected to by complainant as immaterial)

A. I cannot answer the question for I don't know.

214. Was he or not a member of the board of directors during the time you were officially connected with it?

A. I think he was.

215. What, if any, conversation did you ever have with Mr. Little with respect to the price of gas or fixing or changing it during that time?

(Objected to by complainant as immaterial)

A. I had no conversation with him on the subject.

216. What, if any, statements did he at any time make to the board of directors, or at any directors' meeting when you were present, touching that subject?

Objected to by complainant as incompetent and immaterial.

A. I don't recall any.

217. What, if anything, did he at any time during his connection with complainant company, say to you with respect to the prices at which gas could be furnished to consumers in the city of Peoria?

Objected to by complainant as incompetent and immaterial.

A. He never said anything that I recall.

218. Do you know whether or not Mr. Little is a man skilled in the gas industry?

A. Personally I don't know; he has the reputation of being.

219. During what portion of your life since reaching maturity have you been actively engaged in business?

A. Ever since maturity.

220. During that time have your interests been large or small and over what part of the country has your business extended?

A. They have extended from Cleveland to Peoria, or be-
828 & 829 tween those two cities. You speak of my personal business?

221. No, I want to ascertain over what territory your business interests have extended?

A. You mean the interests I have been connected with?

222. Where your products have gone?

Ans. All over the country.

223. And does that extend to exporting also?

A. At times, yes.

224. Has that been the fact for a considerable number of years extending up to the time you became interested in the complainant company?

Ans. Yes sir.

225. In what cities, other than Peoria, have you had personal business interests during the period covered by your business life?

Objected to by complainant as immaterial.

A. Well, Cleveland, Peoria, Chicago; that is all I recall.

226. Has Corning & Co., or any of the distilling interests with which you have been closely identified ever maintained an office in the city of New York?

(Objected to by complainant as immaterial.)

A. Yes sir.

227. State whether or not you were at one time a director or officer in a corporation known as the Distilling & Cattle Feeding Company, generally known as the "Whisky trust"?

Objected to by complainant as immaterial.

The MASTER: I do not see the materiality of it but I suppose it is offered for the purpose of showing the wide business connections of this witness.

Mr. TICHENOR: That is exactly the reason I ask it.

A. Thank the Lord! No, that is one thing I escaped.

228. State whether or not you were ever at any time a director or officer in an organization which came into existence after that and which in a measure took its place, known as the "American Spirits Manufacturing Co."?

830 Objected to by complainant as immaterial.

A. No.

229. Were you ever a director or officer in an organization known as the Standard Distilling & Distributing Company?

Objected to by complainant same ground.

A. No.

230. You know of all of those organizations, do you not?

A. Yes.

231. Have you done business with all of them directly or indirectly?

A. We have done business with two of them, that is, in the period of years you are speaking of now.

232. State whether at any time during the last 10 years you have been a director or officer in any of the three companies last mentioned?

(Objected to by complainant as immaterial.)

A. No.

233. And are not now?

Ans. No.

234. Outside of the presidency of the two corporations to which you have referred have you at any time within the last 4 or 5 years been a director or officer in any other corporation interested in the distilling business either in the line of spirits or whiskies so-called?

(Objected to same ground.)

A. No.

235. And are not now?

Ans. No.

HENRY SANDMEYER, called on behalf of the defendant, being first duly sworn, deposes and says.

Direct interrogatories by Mr. TICHENOR:

1. State your name, residence and business?

A. Henry Sandmeyer; No. 305 N. Monroe St., Peoria, Ill.; am in the stove and hardware business.

831 2. Wholesale or retail?

Ans. We do some wholesaling.

3. Are you engaged in any other line of business except that which you have mentioned? If so, what?

A. Yes sir; I am president of the Peoria stone & marble works and am vice president of the Merchants national bank.

4. Are there any other enterprises or companies in which you are at present engaged or interested?

Ans. No sir;

5. How long have you been engaged in the hardware business of the character of which you have mentioned?

A. I went to work in the hardware business in 1851, and have been in it continuously since that time in Peoria.

6. How long have you been president of the Peoria stone & marble works?

Ans. Quite a long time; I could not exactly remember the number of years.

7. In what business is that company engaged?

A. Making such work as you see in this room; we do not handle any granite, but building stone, marble and tile work.

8. Where is that industry located?

Ans. Up on Adams St.,

9. How old an enterprise is it?

Ans. About 14 or 15 years old.

10. During what portion of the time since its organization have you been interested in it?

A. I have not been interested in it all the time since its organization; it went down hill so I had to take hold of it and pull it up.

11. State whether that is a large or small industry?

A. It did over $300,000 worth of business last year.

12. Over what territory does that business extend?

A. We sell goods in New York and Cincinnati; we have a big shop at Colorado Springs; we do lots of work in Chicago; it is all over the United States; we have the exclusive sale of the green marble for the United States.

832 *marble for the United States.*

13. You have been president of that company for 8 or 10 years or more?

Ans. Yes sir.

14. How long have you been interested in the Merchants National Bank of Peoria?

A. Well, since the Merchants' national bank was re-organized from Mechanics' national bank.

15. Do you remember about how many years ago that was?

A. I could not tell exactly, but think it was about 8 or 10 years ago.

16. During what portion of that time have you been its vice president?

A. I think it is about 5 or 6 years.

17. Before that time what was your official connection with that bank?

A. I was a director for some time.

18. What is the name of the firm in which you are now interested in the hardware business?

A. H. Sandmeyer & Co.

19. How many members of that firm are there?

A. There has only been three; we are just now making a stock company out of it; incorporating it into a stock company; before this it has been a partnership for many years.

20. State whether or not you remember becoming interested in The Peoria Gas & Electric Company, the complainant in this case?

Ans. Yes sir, somewhat.

21. You were a subscriber for some stock at the time the company was being organized?

Ans. Yes sir.

22. What, if any, office in the company have you held?

A. I never held any office.

23. State under what circumstances you first became interested in the company—how did it happen that you took an interest?

833 Objected to by complainant as immaterial.

A. Well the bank took an interest and I thought it was a good thing and so I took an interest in it.

24. To what bank do you refer?

Ans. The Merchants national.

25. Do you mean the bank itself or other people associated in the bank with you?

A. Some of them associated with me in the bank.

26. The bank of course was never a stockholder?

A. No sir.

27. What representations, if any, were made to you before you became a subscriber with respect to the possibilities of the company in case it could obtain a franchise in Peoria?

Objected to by complainant as immaterial.

A. I don't know as there was anything mentioned, only I thought it would be a good thing to have a new gas company here on account of competition.

28. Are you able to state at this time who first interested you in the subject?

A. That I cannot tell; I know we talked the matter over in the bank several times; I could not tell who was the first man that spoke about it.

29. You say you talked it over in the bank—was that among the other people interested in the bank with you?

A. Mr. Littlewood, Mr. Ferd. Luthy and Sumner Clark and others interested in it.

30. What official connection with the Merchants national bank had George H. Littlewood at that time?

A. Cashier.

31. How long had he been cashier?

Ans. A long time.

32. What position, if any, did Mr. Luthy occupy?

A. President.

834 33. Was he president at that time and had he been for some years?

Ans. Yes, sir.

34. What position, if any, did Sumner R. Clarke occupy in that bank at that time?

Ans. Director.

35. Had he been for some years?

Ans. Yes sir.

36. This discussion to which you have referred as I understand, was among those gentlemen whose names you have mentioned and yourself?

Ans. Yes sir.

37. Who, if anyone, among those persons brought up the subject or took the lead in the discussion, if you are able to state from recollection at this time?

Objected to by complainant as immaterial.

A. I really cannot recollect exactly who first talked about us going into that new gas company.

38. On how many different occasions, in a general way, were

there discussions in your bank of that character prior to the organization of the company?

Objected to by complainant as immaterial.

A. I could not tell now.

39. Who of you took part in any of those conversations to which you have referred?

Objected to by complainant as immaterial and already answered.

A. Well, the same men that spoke about it before; Sumner R. Clarke talked to me sometimes and Theodore Miller talked to me I think.

40. I have reference more particularly to the discussions in the bank.

A. There was not much discussion there, only the question came up about taking stock and of course I—Interrupted——

41. During those discussions was the question of competi-
835 tion one which you considered, if so, what was said about it?

Objected to by complainant as immaterial.

A. I don't think there was anything said about that—not that I recollect of.

42. How long before you became a subscriber to the stock of that company did you first know of its proposed organization and in what way was the subject brought to your attention?

Objected to by complainant as immaterial.

A. Well I never took much interest and don't recollect much about it.

43. State whether or not, so far as you became interested in it and so far as you investigated, did you do that in person or depend upon somebody else?

Objected to by complainant as immaterial.

The MASTER: I do not see the materiality of it but the witness may answer subject to the objection.

A. I did it more on account of the men who were in it—Mr. Corning and Mr. Bailey.

44. Then at the time you took up the subject, as I understand you, a number of those gentlemen had already become identified with it in one way or another.

Ans. Yes sir.

45. How many of the gentlemen who subsequently became stockholders of that company had become identified with the proposed organization prior to the time you became a subscriber?

Objected to by complainant as immaterial.

A. Well, I don't recollect but I believe there were several; I think I was one of the last to subscribe.

46. Did you take the stock subscribed by you?

Objected to by complainant as immaterial.

A. Well, I took the stock; I subscribed to the stock.

47. State whether or not you are now a stockholder of that
836 company?

Objected to by complainant as incompetent and immaterial

The MASTER: I think this evidence competent under the affirmative matter set up in this case; not as rebutting any of the proof made by complainant but as sustaining the affirmative matter contained in defendant's answer.

Mr. TICHENOR: Of course, we are not called upon to limit ourselves to rebutting complainant's evidence; we have a right to make out our own case in our own way.

The MASTER: Yes, but I simply desire to make that personal explanation.

A. No sir.

48. State whether or not you paid in full for that stock subscription which you took?

Objected to by complainant same grounds, and also because there is no issue in this case or no matter set up in the answer that would make that competent.

The MASTER: I don't know about that; there is a charge that this ordinance was obtained by fraud—a direct charge in the answer.

Mr. IRWIN: Suppose it was obtained by fraud, it would not affect the issues in this case; it is an immaterial allegation entirely.

The MASTER: You think the fact then that they say this ordinance was procured by a fraud is immaterial.

Mr. IRWIN: It is absolutely immaterial, but whether Mr. Sandmeyer paid for his stock or not don't establish that fact; no one pretends there was any payment for stock until they began to construct the plant—they would have no use for money up to that time.

The MASTER: How do you claim that becomes material,
837 Mr. Tichenor.

Mr. TICHENOR: There are a number of ways in which it becomes material; the complainant has attempted to show the plant cost $434,000, and if that stock was not paid for in full where did the money come from?

Mr. IRWIN: It don't make any difference; it is nobody's business. Somebody might have given the money to the company or loaned it to them.

Mr. TICHENOR: If the stock was not paid in does not that tend to show the plant did not cost that much money; it is a fact we have a right to bring out and have a right to know at this time.

The MASTER: I am inclined to think it is competent testimony and the witness may answer subject to the objection.

Mr. IRWIN: I will then direct the witness if he does not care to answer he need not.

The WITNESS: What shall I do; shall I answer it or not?

The MASTER: You can use your own judgment about it; the master has ruled you could answer the question and counsel for complainant has instructed you you need not answer unless you want to; he has no right to so instruct you and you can do as you please.

The WITNESS: I guess I will not answer.

49. What, if anything, have you ever paid on the stock subscription which you took in the complainant company?

Objected to by complainant as incompetent and immaterial.

The MASTER: The witness may answer subject to the objection.

Mr. IRWIN: I will inform the witness he may refuse to answer that question if he desires.

Mr. TICHENOR: I understand that Mr. Sandmeyer is our witness and if counsel for complainant proposes to sit here and instruct our witnesses they need not answer questions unless they please we might as well close our case now because we cannot get any
838 evidence under those circumstances.

The COURT: You do not need to do that, your recourse is open to you.

Mr. TICHENOR: Yes it is open to us through the court.

Mr. IRWIN: We are ready to submit that proposition to the court at any time.

Mr. TICHENOR: The master can see precisely what such a course will result in if Mr. Irwin insists on his position; I believe I will let him do it and instruct every witness we put on that he need not answer every question asked or he may instruct the witness as soon as he is sworn that he need not answer any question unless he desires.

Mr. IRWIN: I will do what I think is the proper thing to do.

The MASTER: You understand I am powerless to do other than I have done; the only thing the master can do is to rule on these questions as put but he cannot pass upon the competency of the evidence or compel the witness to answer if he does not want to; the only thing you can do, as the master understands it, is to apply to the court for a rule on the witness to answer and then of course the witness will be bound by what the court directs; of course, if the master had the power to do so, he would enforce a compliance with his rulings but as the master understands the law he has no such power.

Mr. TICHENOR: Does the master desire to take an adjournment now in order to enable us to present this question to the court, if so we will go up to Chicago and present it tomorrow.

The MASTER: No sir; the master will allow you to recall this witness, or any other witness on those questions the witness refuses to

answer at any time you desire until you close your case. Now let us get along with the examination gentlemen.

A. Well, I will not answer.

839 50. State how many assessments, by the board of directors of the company, were made upon this stock during the time you were a stockholder?

Objected to by complainant as immaterial, incompetent and irrelevant.

A. Shall I answer it?

The MASTER: Yes you may answer subject to the objection.

A. I don't know.

51. State whether or not any were made?

Objected to by complainant same grounds.

A. I cannot tell.

52. Where were you during the year 1899?

A. I was here in Peoria all of the year except I generally go away in July and did that year.

53. Do you know where the office of the complainant company was during that year?

Ans. No sir.

54. Do you know whether or not it had an office in Peoria then?

Ans. No sir.

55. Were you or not present at a meeting of the subscribers of the capital stock for the complainant company at the time they met for the completion of the organization so far as they were concerned?

Objected to by complainant as immaterial.

A. Yes sir.

56. Where was that meeting held?

A. I think it was in the Niagara building.

57. Who were present at that meeting?

Objected to as immaterial.

A. I think all the stockholders.

58. How many of the other gentlemen who subscribed for stock in the complainant company did you know personally at that time?

840 A. I guess I knew them all.

59. How long had you known them in a general way?

A. For quite a long time—for many years.

60. How many, if any, of them were engaged in business in Peoria at that time?

A. I think they were all engaged in business here; I don't think there was a stranger in it.

61. Were their business interests in Peoria at that time large or small and what had they been in past years within your knowledge?

A. I think they were all large business men.

62. How long had you known Sumner R. Clarke?

A. Since I was a boy I guess.

63. Do you know in what lines of business he had been engaged up to the time of the organization of this company?

A. I know some of them; he used to be in the distilling business, then he was in the real estate business and I guess loaning out some money.

64. He is not in the distilling business at this time, is he?

A. I could not tell.

65. Do you know where his office is in Peoria?

A. Yes sir.

66. What was the financial standing and ability of the gentlemen with whom you were associated as subscribers for that stock at that time?

A. They were all pretty well off.

67. State whether or not you were ever present at a meeting of the subscribers or stockholders of that company at any time other than the one, to which you have referred, in the Niagara building?

Ans. No sir.

68. State whether or not at that meeting directors for the company were elected?

Ans. Yes sir.

841 69. How long was that meeting in session if you know?

A. I think about maybe half or three-quarters of an hour.

70. How did you happen to appear at that meeting?

Objected to by complainant as immaterial.

A. I don't really recall but think I got a notice that the meeting was to be held.

71. Prior to the time you subscribed for the stock in question, state whether or not you had ever been a stockholder in any gas company?

Objected to by complainant as immaterial.

A. No sir.

72. What, if any knowledge, had you at that time of the cost or process or manufacture of gas for illuminating and fuel purposes?

Objected to by complainant as incompetent and immaterial.

A. Not any.

73. What, if anything, had you personally to do previous to that time with the construction of gas plants?

Objected to by complainant as immaterial.

A. Not anything.

74. State whether or not at the time of the preliminary arrangement for the organization of complainant company there was a gas company in operation in the city of Peoria?

Objected to by complainant as immaterial.

A. Yes sir.

75. How long within your knowledge had that company bee operation here?

Objected to as immaterial.

A. I could not tell exactly, but for a long time; I know *wh* it built; I was living here at the time.

76. Do you remember at this time the men who w
842 original- interested in the construction of that plant?

Objected to as immaterial.

A. No sir, I do not recollect.

77. Do you know the gentlemen who have been prominen identified with that company for the past twenty or thirty years so, who were they?

Objected to as incompetent and immaterial.

A. Yes sir; Peter Coffey, William Herron, Matthew Henebe Matthew Griswoold, Leslie Robison, Matthew Farrelly, and a gr many others.

78. Who is this Mr. Herron to which you refer?

A. The president of the Peoria savings bank; an old bank Peoria.

79. What within that time has been the financial standing a responsibility of all those gentlemen, whose names you have me tioned as being connected with the old gas company?

Objected to as incompetent and immaterial.

A. So far as I know, they are all good men and all of go standing.

80. What has been their financial responsibility?

Objected to as immaterial.

A. I think they are all right so far as I know.

81. Are they men of large or small means?

A. I think they are men of large means.

82. Are there any others of those whose names you have me tioned who are and have been bankers for a great many years?

Objected to as incompetent and immaterial.

The MASTER: I think it material under one view of this case.

A. I don't recollect.

83. Do you know Matthew Henebery well?

Ans. Yes.

84. Has he been a banker for a great many years?

843 Objected to as immaterial.

A. Yes, he has been connected with the First National Bank o Peoria.

85. Is the First National Bank of Peoria an old or a new institution?

Objected to as immaterial.

The MASTER: I don't know that it is particularly material but I can see one view of it where it may be.

A. It is an old bank.

86. What is its standing compared with the other banks in Peoria?

Objected to as immaterial.

A. It is all right—good standing.

87. The Matthew Griswold you have mentioned is now dead?

A. Yes sir.

88. What official connection with the bank did Leslie Robison have within your knowledge?

Objected to as immaterial.

A. I could not tell.

89. Over what territory, during the time you have known the old gas company, has it been operating—I mean up to the time of the organization of the complainant company?

Objected to as immaterial, incompetent and irrelevant.

A. I cannot tell; I don't know how far it runs out; it went over considerable territory.

90. Do you know whether its operation was limited to a certain portion of Peoria or did it cover the whole town?

Objected to same grounds and because the witness has already answered the question so far as he knows.

The MASTER: If he can answer it more fully let him do so.

A. I cannot answer it any more fully.

844 91. For how long a time had you been a consumer of the old gas company at the time of the organization of the new company?

Objected to as immaterial.

The MASTER: I do not see the materiality of it but the witness may answer subject to the objection.

A. I could not tell, it has been a long time ago.

92. But practically since its organization?

Objected to as leading and immaterial.

A. Yes sir.

93. State under what circumstances you subscribed for the stock in the new company as you have testified?

Objected to as incompetent, immaterial, irrelevant and because already asked and answered.

A. I thought it was a good thing to have another company.

94. State whether or not at the time you made your subscription it was made absolutely or conditional?

Objected to as incompetent, immaterial, irrelevant and calling for a conclusion.

A. It was conditional at the time it was complete.

Complainant objects to the foregoing answer because the subscription itself shows how the subscription was made and further because the answer is incompetent, immaterial, irrelevant and not a pertinent way of showing what a subscription is and move- the court to exclude it.

95. To whom did you make that subscription, or in other words, at whose solicitation, if anyone's, did you subscribe to the stock?

Objected to as incompetent and immaterial.

The MASTER: I thin- it competent to show at whose solicitation the stock was subscribed; the witness may answer subject to the objection.

A. At the solicitation of Sumner R. Clarke.

845 96. State whether or not at the time you made that subscription you had any written agreement with Mr. Clarke pertaining to that stock.

Objected to as incompetent, immaterial, irrelevant.

A. Yes sir, I had a written agreement.

97. Have you that written agreement with you now?

A. No sir, I gave it back to Mr. Clarke again.

98. When did you surrender it to him?

Mr. IRWIN: Complainant objects to the question as incompetent and immaterial and I will advise the witness that so far as his personal dealings with Mr. Clarke with reference to this stock, or anybody else, are concerned he has a right to refuse to answer.

The MASTER: I doubt your right, Mr. Irwin, to instruct a witness called by the defendant, that he need not answer; I do not think you have that power; if it were one of your witnesses that was on the stand you might exercise that privilege but when a witness is put on by the opposite party I do not think you have a right to do it.

Mr. IRWIN: The master says he has no power to rule on the competency of the testimony and we think the witness has a right to protection and unless I am compelled to desist I shall certainly assume that right when counsel asks concerning matters wherein I think the witness is entitled to protection.

The MASTER: The witness can avail himself of his right to refuse to answer if he desires.

Mr. TICHENOR: I desire to state my position; I am not seeking to inquire into a single thing pertaining to Mr. Sandmeyer's private

business in any way, shape or form; my inquiries are entirely with reference to transactions which are material in the matter in controversy, or at least I believe them to be material and necessary to make a proper defense; there are a great many details it is necessary for us to bring out and have made a matter of record and I am seeking to accomplish that; I am not seeking to inquire into Mr. Sandmeyer's private business nor trying to lay any foundation for prosecution or any liability or anything of the kind; I think I have a right to show the circumstances under which Mr. Sandmeyer was induced to make this subscription and under which he did make it and the outcome of it as a whole.

846

Mr. IRWIN: I do not care whether he made it under the grossest representations of fraud.

Mr. TICHENOR: I am not charging that he subscribed under misrepresentations at all.

Mr. IRWIN: It has not anything to do with this case or any issues that can possibly arise in the case.

The MASTER: Gentlemen, I think this is a matter perhaps for final argument; the master has admitted this proof upon the assumption it was offered to establish the affirmative matter set up in the answer in this case; the master would be disinclined to allow counsel to inquire into the private affairs of anybody and the master has not discovered so far there has been any attempt to do so; the present opinion of the master is that inquiry touching the organization of this company, in view of the answer in this case, is competent and the master has permitted inquiry along those lines simply as a defense in the case under the answer. The witness may answer subject to the objection.

A. I gave him up the paper when he took the stock off my hands.

99. When was that with reference to the time you subscribed it?

Objected to as incompetent, irrelevant, immaterial.

847

A. I could not recollect how long but it was a few months afterwards.

100. Why did you sur-ender that stock?

Objected to same ground.

The MASTER: The witness may answer subject to the objection.

Mr. IRWIN: I will advise the witness that he has a right to refuse to answer that question if he desires.

A. Oh, I don't think it has any bearing anyhow—shall I answer it?

The MASTER: Yes, if you desire.

A. Well, I had business enough without being connected with a gas company.

101. To what extent had your business been increased from the time you subscribed to that stock up to the time you surrendered it?

Objected to same grounds as before.

The MASTER: I don't think that question material.

Mr. TICHENOR: Well, I will withdraw it.

102. Was that your only reason for giving up the stock at that time?

Ans. Yes sir.

103 Were you a director or officer or in any way connected with the gas company from its incorporation up to the time you surrendered the stock?

A. No, sir, I did not attend any meetings.

104. What duties, if any, had you to perform or did you perform in connection with the operation of complainant company during the period you were a stockholder in it?

A. Oh, I didn't do any work for the company—never did.

105. I understand from your former testimony that you never attended more than the one meeting in the Niagara building in all that time?

Ans. That is all.

848 106. Are you able to fix with any degree of accuracy the date you surrendered your stock to Sumner R. Clarke?

Objected to as immaterial, incompetent and irrelevant.

A. No sir.

107. State whether or not that surrender was of your own motion or whether it was solicited by Mr. Clarke?

Objected to same ground.

A. It was on my own motion.

108. Look at the paper now shown you, marked "Exhibit 19" and state whether or not your genuine signature is attached to it.

A. Yes sir.

109. Who presented that paper to you for your signature?

A. I don't recollect whether it was Theodore Miller or Sumner R. Clarke but think it was one of those two.

110. Do you remember the occasion of an ordinance being introduced in the city council for the purpose of obtaining a license for complainant company?

A. I recollect a little about it but not much.

111. At the time this paper, "Exhibit 19" was presented to you for your signature, did you, or did you not, know that the ordinance was pending before the council?

A. Yes, I knew the ordinance was pending.

112. What, if anything, did you have to do, by way of suggestion or otherwise, with reference to the preparation of that ordinance before it was submitted?

A. I don't think I had anything to do.

113. State whether or not you were consulted in any way by any of your associates with reference to that subject matter?

A. No sir, I don't think I was.

114. Where, if you remember, was "Exhibit 19" presented to you for your signature?

49 A. I think it was in my office or down at the bank, I could not tell exactly which.

115. State whether or not at the time you affixed your signature o "Exhibit 19" you believed in good faith that the statements hich it contained were true?

Objected to as incompetent and immaterial.

A. Yes sir.

116. State whether or not at that time you believed in good faith hat the complainant company, if granted a license under the ordiance then pending, would carry out in good faith the representaions made in "Exhibit 19"?

Objected to as incompetent, immaterial and because there is no vidence to show they have not done it and as a matter of fact they ave done it.

A. Yes sir.

117. State whether or not at the time you signed "Exhibit 19" ou believed that the complainant company, if granted a license nder the ordinance then pending, would be able in all respects to arry out in good faith the representations embodied in that exhibit?

Objected to as incompetent and immaterial.

A. Yes sir.

118. State whether or not you saw that document prior to the time was presented to you for your signature?

A. I don't think I saw it before I signed it.

119. State whether or not prior to the time you signed that paper ou were consulted by any of your associates, subscribers for stock n that company, with reference to the preparation and presentation o the city council of a document of that character.

Objected to as incompetent, immaterial and irrelevant.

A. I don't recollect: I could not answer that question.

50 Cross interrogatories by Mr. IRWIN:

1. You spoke of some agreement between yourself and Mr. Clarke ith reference to your subscription of stock—was that stock ever ssued and delivered to you?

A. No sir.

2. Was not the agreement that Mr. Clarke had with you that if ou did not want that stock at any time, within a reasonable time, e would take it off your hands?

A. Yes sir.

3. And he did do it, is not that so?
A. Yes sir.
4. And that was all there was to it?
A. That was all there was to it; that is the way I went into it.

Mr. TICHENOR: Wait a minute, if that was a written agreement the writing would be the best evidence of what it contained.
The MASTER: I think so, I do not think the answer is competent.
Mr. TICHENOR: We move to exclude the answer.

5. Did not Mr. Clarke take your subscription off your hands before there was any assessment on your stock?
A. Yes sir.
6. Then the reason you paid no assessment on the stock was because no assessment was made on the stock while your subscription stood?
Ans. Yes.
7. You had a right to keep that stock if you wanted to?

Objected to as being argumentative.

A. Yes.
8. And Mr. Clarke took it off your hands because you asked him to do so?
Ans. That is so.
9. And you surrendered all your claims to the stock to Mr.
851 Clarke before any assessments were made upon the stock?
A. Yes sir.
10. You say you signed "Exhibit 19" and that you believed the statements in it were true at that time?
Ans. Yes sir.
11. Do you know that they are not true now?

Objected to as calling for a conclusion, and because the witness has stated he never attended a meeting and does not know anything about what they have done or were doing.

A. No sir.
12. So far as you know, they are true today—is not that a fact?

Objected to same reasons as before.

A. Yes.

Re-direct interrogatories by Mr. TICHENOR:

1. How do you know that up to the time you surrendered that stock no assessment had been made upon it?
A. I should think they would have called on me if there had been.
2. Have you had anything whatever to do with this gas company as a business man in a business way since you surrendered your stock?

A. No sir, except I have had their gas put in.

3. Have you at any time had any knowledge whatever of what that company was doing in a business way since that time?

A. No sir.

Re-cross interrogatories by Mr. IRWIN:

1. Did you consider you had any right to have anything to do with the business of the company after you surrendered all your stock?

Objected to as immaterial and argumentative.

A. No sir.

852 ROBERT D. CLARKE, called on behalf of the defendant, being first duly sworn, deposes and says.

Direct interrogatories by Mr. TICHENOR:

A. My name is Robert D. Clarke; reside in Peoria, Illinois; am in the distilling and cracker business; have resided in Peoria all my life; ever since I was of age I have been actively engaged in business; have been engaged in the distilling business off and on for 6 years; am at present associated with Clarke Bros. & Co., a corporation; am manager of the distillery for that company; have held that position 2½ years; have held various positions in the distillery of Clarke Bros., and was a director of the Clarke Distilling Co., for three years prior to the time I took the management of this house; am a director in the present corporation; the plant is in Peoria township, Peoria county, Illinois.

1. Do you know how long the Clarke Bros., to whom you refer, have been engaged in the distilling business in Peoria?

A. Well, off and on for 30 odd years.

2. When was the present company organized?

A. About 3 years ago.

3. And you became identified with it at once and have been ever since?

Ans. Yes sir.

4. Over what territory has the business of that company, since its organization, extended?

Ans. All over this country.

5. Does your company also do an export business?

A. Whenever the markets are right we do.

6. What are your duties and what do you do as manager of the distillery you have mentioned?

A. I attend to all the purchasing for the manufacturing department and all of the supplies and all the manufacturing in detail.

7. In other words you are an active [illegible]er, devoting your time to the business?

Ans. Yes sir.

853 8. State whether or not you have ever been actively engaged in any other business than the line to which you have already referred?

A. No, sir, except I might say farming.

9. Do you also, and have you for some time past, been an extensive operator of farms?

Ans. Yes.

10. In what territory generally are those farms located?

A. Principally in Illinois.

11. For how many years past have you been quite largely interested in farms?

A. I have actual charge of the farms I mentioned for about eight years.

12. In connection with the distilling business state whether or not you are also engaged in feeding cattle?

A. We are to a small extent.

13. Are you also engaged in the cattle feeding business as a separate and distinct line?

Ans. I am.

14. Is that extensively or on a small scale?

A. Rather extensively for an ordinary farmer but in the cattle raising business it would not be so much so.

15. For how many years has that been of a considerable magnitude as you have testified?

Ans. Very recently.

16. State whether or not you remember about the time of the organization of complainant company?

A. Yes, I remember about the time.

17. Were you one of the original subscribers to stock in that company?

Ans. I think so.

18. Prior to the time that you became interested in that company, what, if any, experience had you had in the gas industry either in Peoria or elsewhere?

Objected to as immaterial.

854 A. None whatever.

19. What knowledge, technical or otherwise, had you of the gas business as carried on in the United States at and prior to that time?

Objected to as immaterial.

A. None whatever.

20. At that time your connection with the distilling business, to which you have referred, was the same as it is at the present time was it?

A. I think not; I don't think we were organized at that time.

21. Do you remember in what year the gas company in question was organized?

Ans. No sir I do not.

22. If that company was organized in March 1899, are you able to state whether or not the distillery with which you are now connected had then been incorporated?

A. They were very close together.

23. Where was the old Clarke Brothers distilling plant located before the installation of the new plant?

A. At the foot of Persimmon street, about 3½ miles from our present location.

24. Since the completion of the new plant the business of your company has been entirely carried on at that place, has it not?

A. Well, we have two separate places of business, that is, the manufacturing end of the business is down at the distillery and the office work is done at the compounding house.

25. Your business is at the building 3½ miles from the old location?

A. Yes sir, and I have nothing to do with the other.

26. What relation exists between you and Sumner R. Clarke whose name has been mentioned in this testimony?

855 A. He is my father.

27. How long prior to the time you became a subscriber to the capital stock of the complainant corporation did you, if at all, commence any investigation with reference to the proposed organization and the business in which it was to engage?

Objected to as immaterial and irrelevant.

A. I don't remember.

28. Where were you during the early months of 1899?

A. I could not say as to that.

29. During the last three or four years where have you been most of the time?

Ans. In Peoria.

30. Who first, if you remember, called your attention to the proposed organization of the complainant company?

Objected to as immaterial and irrelevant.

A. C. C. Clarke.

31. He was one of the Clarke Brothers and is now deceased?

A. Yes sir.

32. What were the circumstances under which that subject was brought to your attention?

Objected to as immaterial and irrelevant.

A. I don't recall the place or time but it was in general conversation.

33. Do you remember at this time the nature of that conversation?

Objected to same grounds.

A. Not exactly, but it was general conversation about the gas business and what we knew from being close to the old gas company's plant for a good many years.

34. Did he or did he not at that time express himself as intending to become an interested party in the new organization?

Objected to same grounds.

856 A. I don't recall that.

35. Do you know whether or not at that time C. C. Clarke had already become a subscriber to that capital stock?

A. I do not.

36. He was a subscriber was he not?

A. My opinion is he was but I am not positive.

37. Was there any other Charles C. Clarke in Peoria at that time to your knowledge?

Ans. Not that I know of.

38. How long was that prior to the time you did make a subscription to the stock?

Objected to as immaterial and irrelevant.

A. I could not say as to that.

39. Did you ever have any further conversation with him relative to the subject of subscribing?

A. I might have had; undoubtedly I did.

40. Are you able to recall at this time anything that was said on any such occasion?

Ans. No sir.

41. What, if any, representation did C. C. Clarke make to you at that time with reference to the desirability or undesirability of the stock as an investment?

Objected to same grounds.

A. I don't recall that either.

42. Who, if anyone else of the several persons subsequently subscribing to the stock, did you confer with, or converse with, before becoming a subscriber?

Objected to same grounds.

A. Mr. C. D. Clarke, a brother of C. C. Clarke.

43. When was that with reference to your conversation with C. C. Clarke?

Objected to same grounds.

A. In a general way, along about the same time.

857 44. What was said at that time?

Objected to same grounds.

A. I don't recall the conversation.

45. Do you know whether or not C. D. Clarke was then a subscriber to this stock?

Ans. Not positively, no sir.

46. What was his full Christian name?

Ans. Chauncey D.

47. Was there any other Clarke in Peoria by that name at that time within your knowledge?

A. There was no other Chauncey D. Clarke to my knowledge but there was a C. D. Clark.

48. How does that C. D. Clark spell his name, with an "e" or without it?

A. Chauncey D. spells his with an "e" and I think the other Clark in the other family is spelled without the "e."

49. State whether or not, prior to the time you subscribed, you had any conversation with Sumner R. Clarke touching the advisability of becoming such a subscriber?

Objected to as incompetent and immaterial.

A. I most always talked with my father before doing anything in a business way.

50. When with reference to the other conversation, to which you have referred, did you talk with your father upon this subject?

Objected to same grounds.

A. I don't recall.

51. Up to that time what experience, if any, had your father had in the gas industry as an interested party?

Objected to as incompetent and immaterial.

A. I don't know sir.

52. Had he within your knowledge ever been interested in any gas company in the United States?

Ans. Not to my knowledge.

53. Do you know whether or not he was ever a stockholder
858 in *in* the old gas company in Peoria?

Objected to same grounds.

A. I don't know.

54. What, if any, technical education had your father upon the subject of the gas industry?

Objected to same grounds.

A. I don't know of his having any.

55. What has been your father's business within the time covered by your recollection?

A. He has been in a number of different businesses but principally distilling business.

56. He is not engaged in that line at present, is he?

A. Yes, sir, actively.

57. With what distillery is he at present identified?

A. Clarke Bros. & Co.

58. Is he an officer of that company?
Ans. Yes sir.
59. What is his official designation?
Ans. President.
60. How long has he occupied that position?
A. A few months.
61. When, with reference to the time Charles C. Clarke died, did he become its president?
Ans. A few months afterwards.
62. Was Charles C. Clarke its president in his lifetime?
A. Yes sir.
63. Up to the time your father was elected president of that company for some years, with what distilling company, if any, had he been actively engaged?

Objected to as incompetent and immaterial.

A. He had not been with any company for a number of years.
64. About how many years ago, if you remember, did he discontinue the distilling business?

Objected to as incompetent and immaterial.
859 *Objected to as incompetent and immaterial.*
The MASTER: I don't see the materiality of it.
Mr. TICHENOR: We think it has a bearing.

A. 10 or 12 years.
65. What, if any, general or technical education have you had in the gas industry?

Objected to as immaterial and irrelevant.

A. None whatever.
66. At whose solicitation did you become a subscriber to the stock in question?

Objected to same grounds as before.

A. I don't believe it was at anyone's solicitation in particular.
67. Who, if you remember, presented to you the subscription list which you signed?

Objected to same grounds.

A. I don't recall that now.
68. Where were you at the time you made your subscription?

Objected to same grounds.

A. I could not say as to that.
69. What, if any, representations were made to you by anyone with respect to the desirability of this stock as an investment in the event the company could procure a license or franchise from the city?

Objected to same grounds.

A. I did it on my own judgment.

70. On what did you base your judgment as to the desirability of this stock as an investment?

A. On the general consumption of gas in the city of Peoria.

71. Did you also at that time know the cost of delivering
860 gas to consumers under conditions similar to those existing in Peoria?

Objected to as immaterial and irrelevant.

A. I did not.

72. As I understand you, your judgment was based wholly upon the gas consumption?

A. Gas consumption and the value of gas stock in some places.

73. State whether or not at that time you knew the value of the stock of the Peoria Gas Light & Coke Co.?

Objected to same grounds.

A. I did not.

74. Did you or did you not know the total gas consumption per annum in Peoria at that time?

Objected to same grounds.

A. Not positively.

75. Do I understand you to mean by that answer you knew positively then or are not positive now?

A. I didn't know particularly, that is, I was not positive at that time.

76. What, if any, knowledge at that time did you have concerning the process of manufacture or the necessary mechanical appliances for the production of illuminating and fuel gas as it was then furnished in Peoria.

Objected to same grounds.

A. Nothing to speak of.

77. Did you then, and had you for some years, known the people prominently identified with the old gas company?

A. More by reputation than otherwise.

78. What was their reputation as to financial standing and responsibility?

Objected to same grounds.

A. They had the reputation of being very fair business
861 men; I could not say as to their financial standing.

79. Do you know how many of them, if any, were bankers of long standing in Peoria?

Objected to same grounds.

A. I do not know as any of them were interested in a bank positively.

80. Do you know William A. Herron of Peoria?
A. I know him by sight.
81. Do you know in what business he has been engaged for the last 30 or 40 years?

Objected to as immaterial and irrelevant.

A. I know he has been president of a savings bank.
82. Do you know what position he has occupied in that bank for a great many years?

Objected to same grounds.

A. I do not.
83. Do you know the financial standing of that bank?
A. No sir, I do not.
84. Do you know how long it is since it was organized?
A. I do not.
85. Has it not been in existence for 25 or 30 years?

Objected to as immaterial and irrelevant.

A. I know it has for 25 years, but further I could not say.
86. Do you know Matthew Henebery?
Ans. Slightly.
87. Do you know in what line of business he has been engaged for a number of years last past?
Ans. Whiskey business.
88. Do you not also know him as having been a banker for 30 years last past?
A. I have heard him spoken of in that connection but I could not say positively that I know he was a stockholder.
89. Have you known with what bank he has been asso-
862 ciated for many years?
A. I have heard him spoken of as being connected with the First National Bank of Peoria.
90. Did you or did you not know those gentlemen as being prominently identified with the old gas company and had you that knowledge at the time you made your subscription?

Objected to as immaterial and irrelevant.

A. I didn't know that Mr. Henebery was a stockholder in the old gas company or an officer of it.
91. Did you know Peter Coffey, Thomas Coffey, Matthew Farrelley, Leslie Robison and Matthew Griswold at any time as being associated with the Peoria Gas Light & Coke Co.?
A. Why, partly so.
92. Were they or not men engaged in other lines of business besides that of supplying gas in Peoria during the time you knew them or knew of them?

Objected to as immaterial and irrelevant.

A. I never heard of the Coffeys doing anything else but the others I have.

93. What has been Leslie Robison's business during the time you have known him or known of him?

Objected to as immaterial and irrelevant.

A. Brewery business.

94. Do you know whether he is or has been an officer in any brewing company during that time?

Objected to same grounds.

A. I have understood so.

95. Is it or not true that the brewery with which Mr. Robison is associated is one of the largest in Peoria and has been for 20 or 30 years past?

Objected to same grounds.

863 A. I don't think it is—not of recent years.

96. State whether or not a knowledge of the men whose names you have mentioned as being associated with the Peoria Gas Light & Coke Co. at the time of the organization of the complainant company and their financial standing and responsibility in any way influenced your judgment in determining to become a subscriber to the stock of complainant company?

Objected to as immaterial and incompetent

A. I would not say so; I don't think so.

97. Then that fact did not have anything to do with your becoming a subscriber?

Ans. I don't think it did.

98. Have you now stated ev-ry*ht*ing which contributed to making up your judgment as to the desirability of the stock of the People's Gas & Electric Co., now the Peoria Gas & Electric Co., as an investment at the time you became a subscriber?

Objected to as immaterial and irrelevant.

A. I rather think so.

99. Was there any man, either among the subscribers or outside, who brought any influence to bear upon you in determining to become a subscriber?

Objected to as incompetent, immaterial and irrelevant.

A. Not that I know of.

100. Did you take the stock which you subscribed at that time?

Objected to as immaterial and irrelevant.

A. At that time, yes sir.

101. Are you still a stockholder in the complainant company?

Objected to same grounds.

A. I am.

102. And have you been ever since the organization of the company?

Objected to same grounds.

864 A. I have.

103. What, if any, office have you held with that company at any time since its organization?

Ans. None whatever.

104. Were you ever at any time a member of its board of directors?

Ans. No sir.

105. Did you or did you not attend the meeting of the subscribers to the capital stock whoel convened for the purpose of completing the organization so far as the stockholders were concerned?

Ans. I don't recall attending any meetings.

106. State whether or not at any time before the articles of incorporation were issued you attended any meeting of the subscribers, or of persons proposing to becoming subscribers, or in any other manner associated with the complainant company.

Objected to as immaterial and incompetent.

A. It seems to me I have but I cannot recall it positively.

107. Have you any recollection at this time of the circumstances under which you attended any such meeting?

A. No, none whatever.

108. At the time you became a subscriber to this capital stock, di- you, or did you not, know the price of gas to consumers in Peoria?

Objected to as immaterial and irrelevant.

A. I believe I do remember as a subscriber but I would not state positively.

109. Did your knowledge of that fact in any way affect your judgment in deciding to become a stockholder in complainant company?

Ans. I think not.

110. Did you, or did you not, know that at that time there was a difference in price between gas used for fuel purposes and that used for illumination?

Objected to as immaterial and incompetent.

865 A. I could not say positively as to that except from what I heard in a general way.

111. State whether or not you know the price charged the consumer for gas delivered by complainant company when it first began its service?

Objected to as incompetent and immaterial.

A. Not when they started, no sir.

112. Do you know whether or not the price at which they were then furnishing gas was higher or lower than that charged by the old company for the same service?

Objected to same grounds.

A. I think it had always been a little lower.

113. Did you know that fact at the time?

A. I could not state that positively; that is just my recollection of it.

114. Do you know whether or not any changes were made in the prices charged by complainant company from that first adopted within the next year or year and one-half from the time it began to serve consumers?

Objected to as immaterial and irrelevant.

A. I think there was some change.

115. What, if anything, did you have to do with fixing those changes?

Ans. Nothing whatever.

116. What, if any, knowledge did you have prior to such changes being made that they were to take place?

A. None whatever.

117. Did you or did you not know of such changes about the time they were made?

A. Not unless I read it in the newspapers or saw it on my bill.

118. Is it your present recollection that you did or did not
866 know of such changes in any way?

A. None except those I have stated.

119. What were any of those changes to which you have referred?

Objected to as incompetent and immaterial.

A. I don't recall them.

120. Are you able to state at this time from recollection whether those changes consisted of an increase or decrease of the original price charged by complainant company?

Objected to same grounds.

A. It seems to me it has most always been a decrease.

121. What, if you know, was the lowest price charged consumers by complainant company for gas furnished by it?

Objected to same grounds.

A. I could not say as to that positively; I knew so little about that at the time that I am in no position to state it; I did not have time to pay any attention to it; it was a small matter with me.

122. How long have you personally been a consumer of gas in Peoria?

Ans. About six years.

123. From which company or companies during that time have you taken gas?

Objected to as immaterial and irrelevant.

The MASTER: I do not see the materiality of it but the witness may answer subject to the objection.

A. I started taking gas with the old company and then afterwards I took it from the new.

124. Have you been taking gas from the new company from about the time it began service?

A. When they got the service near my house I did.

125. Do you remember when that was with reference to the time they began to furnish gas for consumption?

867 Objected to as incompetent and immaterial, irrelevant.

A. No sir, I could not say.

126. On what street did you reside at the time you began to take gas from the new company?

Ans. Barker avenue.

127. Is not that one of the first streets furnished with gas by the new company?

A. I should not think so, it is so far out.

128. Do you know how many miles of pipe the new company had ready for service at the time it began to furnish gas?

A. No, I do not.

129. Do you know how remote from the gas works the pipe extended in any direction?

A. I could not say as to that positively either.

130. Look at the paper now shown you marked "Exhibit 19" and state if your genuine signature is affixed to it?

Ans. Yes sir.

131. How long, if at all, before that paper was presented for your signature did you know it was proposed to prepare and present such a paper to the city council of Peoria?

Objected to as immaterial and irrelevant.

A. I do not recall that now.

132. Who presented it to you?

Objected to same grounds.

A. I could not say positively; it seems to me I signed it when C. C. Clarke signed it at the distillery but I am not sure about that.

133. Do you remember at this time whether anybody else was present when you signed it besides yourself and C. C. Clarke?

A. Not that I remember of.

134. What, if any, conversation passed between you and C. C. Clarke or anybody else at that time with reference to the advisability of presenting the paper in question to the city council?

368 Objected to as immaterial, incompetent, irrelevant.

A. None that I recollect of; I don't remember the circumstances.

135. Did you see the paper before the time you affixed your signature?

A. I most assuredly did; when I signed it I read it over.

136. Before that time I mean?

A. No, not as I remember of now.

137. You read the paper over at that time did you?

Ans. I did.

138. This is the same paper you signed, is it not?

A. I should judge it is.

139. State whether or not at the time you signed this paper you believed the statements it contained were true?

A. I did, yes sir.

140. State whether or not when you signed that paper you believed that if a franchise was granted to the complainant company it would carry out in good faith those representations?

A. I most assuredly did.

141. State whether or not in your judgment you believed at that time that the company was able to carry out in good faith all of those representations?

A. I did or I don't think I would ever have associated myself with it.

142. Did you or did you not personally at that time believe that those representations could faithfully be carried out—I am speaking now of your own independent judgment at the time you signed the paper?

A. I most assuredly did think so.

143. Did you know about the time that the ordinance for a license to the complainant company was presented to the city council?

Ans. I think so, yes sir.

369 144. At the time you signed "Exhibit 19," did you or did you not know that ordinance was pending before the city council?

A. I don't believe I did positively know at that time that it was.

145. What, if any, active part did you take in securing the passage of the ordinance granting a license to complainant company?

A. I don't think I took any active part.

146. To the best of your recollection, you had nothing to do with it?

Ans. Nothing to speak of.

147. Well, what did you have to do with the passage of the ordinance either directly or indirectly?

A. I don't think I had anything to do with the passage of it but was present in the council when it was passed, as a spectator.

148. How many meetings of the city council did you attend during the pendency of that ordinance?

A. I could not recollect that now but it seems to me it was only one.

149. What was the occasion of your being present at that time?

Objected to as immaterial, irrelevant and incompetent.

A. I had a certain amount of interest in it.

150. State whether or not you went there of your own volition or upon the suggestion of some other person or persons?

Objected to same grounds.

A. I went there of my own accord.

151. How long was the ordinance pending before the council or some committee of the council, if you know?

Objected to same grounds.

A. I don't know.

152. Did you or did you not see the proposed ordinance before its presentation?

870 Objected to same grounds.

A. No sir, I did not.

153. Did you or did you not know what it contained?

Objected to same grounds.

A. No sir.

154. Had you or had you not seen what purported to be a copy of it in the public press or otherwise?

A. I don't recall that.

155. Through what channel did you receive advice to the effect that this ordinance was to be passed on the night you were there?

Objected to same grounds.

A. I didn't know it was going to be passed that night; I just went there as a spectator and it was passed.

156. How frequently, under ordinary circumstances in years past, have you attended the meetings of the city council?

Objected to as immaterial and irrelevant.

The MASTER: I don't think that is material

Mr. TICHENOR: I think it is for the reason the witness has testified he was present at that particular meeting and he has also testified that his investment there was of very small consequence and he gave no attention to it.

The MASTER: He may answer subject to the objection.

A. I will say that for one or two years I was at the council meeting pretty nearly every night when the council was in session waiting for it to adjourn.

157. You never sat in the council, did you?

Ans. No.

158. Was that the only council meeting you attended during the pendency of that ordinance?

Objected to as immaterial and irrelevant.

A. I told you that I thought I only attended one meeting at that time in reply to a former question.

871 Cross interrogatories by Mr. ABBOTT:

1. You are asked some questions on direct examination with reference to the representations in a paper marked "Exhibit 19." One of those representations is as follows: "The signers of this petition believe competition will reduce the price of gas and result in saving thousands of dollars yearly to the public of Peoria; that this view is correct is proven by the fact that the mere threat of competition has reduced the price of gas for light 20 per cent., and actual competition will do much more." Did you believe that to be true at the time you signed this paper?

A. Yes sir.

2. Is it not a fact that while the ordinance for the Peoples Gas & Electric Co. was pending before the council that the Peoria Gas Light & Coke Co. reduced its price for illuminating gas from $1.35 per 1,000 feet with 10 cents rebate for prompt payment, to the rate of $1.00 flat per 1,000 cubic feet?

A. My recollection is, it was reduced materially but just exactly what amount I cannot recall.

3. Is it not a fact that before this ordinance of the Peoples Gas & Electric Co. was before the city council, that the Peoria Gas Light & Coke Co. had made a practice of charging at the rate of $3.00 or $3.50 for the setting of meters used for illuminating gas and a charge of $2.50 for meter setting for meters used for fuel gas and that during the pendency of this ordinance before the city council, or about that time, it abandoned both those charges?

Objected to as immaterial and not proper cross examination.

A. I don't remember the prices exactly but I know I had to pay, and I raised quite a fuss, when I put in my two meters at the house, and afterward when I put in another meter in another house I did not have to pay for it nor for the service pipe going into
872 the house.

4. And had it not been the practice of the Peoria Gas Light & Coke Co. before that time to charge the consumer for the entire cost of the service pipe from the street main into his premises?

Objected to by defendant same grounds.

A. My understanding is, it was.

Defendant objects to the answer as improper and not responsive and moves the court to exclude it.

5. Is that understanding based on the general practice and rules of the Peoria Gas Light & Coke Co. as you understand them to be and existing in the city of Peoria about that time?

Objected to as incompetent and improper.

The MASTER: I don't think it competent but he may answer subject to the objection.

A. Yes, it was my understanding.

6. Another representation contained in this petition is as follows:—"Thousands of dollars are ready to be paid out to the Peoria workingmen, manufacturers and dealers in supplies." Is it not a fact that thousands of dollars were paid out to Peoria workmen, to manufacturers and dealers in supplies by the Peoples Gas & Electric Co. after the passage of this ordinance?

A. I positively know there was, for I saw the men paid off.

7. Another representation is as follows: "This application for the favorable action of your honorable body is made in absolute good faith and the rights, if granted to us, will not be for sale." State whether the rights granted by this ordinance, so far as you know, have ever been sold to any other company, or offered for sale to any other person, firm or corporation?

Objected to by defendant as incompetent, immaterial, not cross examination.

A. Not that I know of.

873 8. Did the company erect and has it continued to maintain, a plant for the purpose of the manufacture and distribution of gas in the city of Peoria?

Ans. Yes sir.

Adjourned by agreement until Thursday, February 20, 1902, at 10:30 o'clock a. m.

United States court room, Government building.

PEORIA, ILL., THURSDAY, *Feb'y* 20, 1902—10:30 a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner; Mr. W. T. Irwin and Mr. W. T. Abbott, appearing for complainant. Mr. F. H. Tichenor appearing for defendant.

THEODORE J. MILLER called on behalf of the defendant, being first duly sworn, deposes and says:—

Direct interrogatories by Mr. TICHENOR:

1. State your name and residence.

A. Theodore J. Miller; Peoria, Ill.

2. How long have you been a resident of Peoria?

A. A little over 44 years.

3. In what business are you engaged at the present time?

A. Real estate.

4. With what companies or firms are you at present associated?

A. I am connected with the Peoria Gas & Electric Co. and with the Peoria & Pekin terminal railway.

5. What official connection have you with the railway company to which you refer?

Ans. I am its president.

6. How long have you been its president?

A. Three years or more.

874 7. State whether or not that railway is in active operation, and if so, for what period of time has it been?

A. It was placed in active operation in April, 1900.

8. Did the company build its own line or lines previous to commencing operations in whole or in part?

Ans. Yes sir.

9. How long prior to the time it went into operation had the company been engaged in construction preparatory to the prosecution of its business as a common carrier?

A. I should say a couple of years.

10. You were its president during all that time, were you?

A. No—well, I was president of the company ever since it was formed but there was a lot of work to do before I got the company formed.

11. But it was all with reference to the ultimate operation of this road to which you have referred?

Ans. Yes sir.

12. What connection have you with the Peoria Gas & Electric Co.?

A. I am its secretary and a director in the company.

13. How long have you occupied those places?

A. Ever since its organization.

14. You were also one of the original subscribers to the capital stock, were you?

Ans. Yes sir.

15. How long prior to the time you became a subscriber did you undertake an investigation of the subject of becoming such subscriber, if at all?

A. Oh, probably 60 days.

16. What were the circumstances under which the question was brought to your attention or presented to you in the first instance?

Objected to as immaterial and irrelevant.

A. I suggested to Sumner R. Clarke that I thought it was a pretty good thing to get up a gas company here.

875 17. Who prior to that time, if anyone, had introduced the subject to you?

Objected to same grounds.

A. Mr. Clarke and I had talked about it.

18. Up to that time who, if anyone, outside of the city of Peoria had broached the subject to you?

Objected to same grounds.

A. I had talked with John R. Walsh of Chicago.

19. Is he the same person who has been interested in this company ever since its organization?

Objected to same grounds.

A. Yes sir.

20. Did you know at that time in what line of business Mr. Walsh was engaged?

Objected to same grounds.

A. Yes sir.

21. Did you then know to what extent, if at all, Mr. Walsh was then interested in gas companies, or ever had been, and also pertaining to his knowledge with respect to gas industries?

Objected to same grounds.

A. No, I didn't know much about that.

22. How long had you been acquainted with Mr. Walsh?

A. I never met him until I went to Chicago for the purpose of seeing him.

23. At whose instance did you go?

Objected to as immaterial and irrelevant.

A. I went with a letter of introduction from Sumner R. Clarke.

24. You interviewed Mr. Walsh on that occasion, did you?

A. I had a talk with him, yes sir.

25. Who introduced the subject of the formation of a gas
876 company in Peoria at the time you met Mr. Walsh?

Objected to as immaterial.

A. I did.

26. What conversation did you have with Mr. Walsh on that occasion so far as you remember at this time?

Objected to as incompetent and immaterial.

A. I told him I thought it would be an easy thing to get up a company and get frontage, get consent of property owners to build a gas works in Peoria; he thought the way the streets were paved it would be hard work to get a sufficient amount of frontage signed up; I assured him it would be a pudding to get it, that it was easy to do it because the old company was very unpopular; that I felt convinced I could get a sufficient amount of frontage; I believe I asked him about how much frontage we should have and he said we ought to have at least 10 miles; I told him I could easily get that.

27. What other subject matter with reference to the old company did you present to him at that time as a reason for believing it would be easy to obtain the requisite frontage as you have stated?

A. As I said before, I told him the old company was very unpopular; the people felt they would like to have somebody else engaged in the business.

28. Did you give him any other reason except the unpopularity of the old company?

A. I don't believe I did.

29. Was that your only reason for presenting the subject or taking up the subject—the unpopularity of the old company?

Objected to as immaterial and irrelevant.

A. No.

30. What further reason was there?

A. I thought it would be a good thing to get into the business.

877 31. Prior to that time what knowledge, if any, had you of the gas business?

Ans. None.

32. Had you ever been a stock holder in the old gas company in Peoria or in any other gas company?

A. No.

33. What, if any, technical knowledge had you concerning the manufacture and production of gas and its distribution to consumers in Peoria or elsewhere?

Ans. I did not have any.

34. You had been a consumer of the old gas company for a number of years, had you not?

Ans. Yes sir.

35. What, if any, differences had ever arisen between you and the old company?

A. Not much, if any.

36. For how long a period of time had you been a consumer of the old company?

Objected to as immaterial.

A. I should say 10 years or more.

37. How long had you been a resident of Peoria?

A. Forty odd years but I lived part of the time where I could not get gas.

38. During any of the time you were a gas consumer, for what purpose did you use it?

Objected to as immaterial.

A. I think we used it for illuminating and fuel both.

39. You personally paid the bills for gas furnished at your residence from time to time did you?

Ans. Yes sir.

40. And you knew the prices being charged at the time you first undertook the subject in question?

Objected to as immaterial.

A. Yes sir.

41. What if any representations did you make to Mr. Walsh
878 on that occasion with respect to the ability of a new organization to furnish gas at lower prices than those then charged in Peoria for fuel and illumination?

Objected to as incompetent and immaterial.

A. I don't recollect having made any statement of that kind.

42. What, if any, representations of like character did he then make to you?

Objected to same grounds.

A. I don't remember that he made any.

43. Was or was not the subject of prices at that time discussed in any form?

Objected to same grounds.

A. It may have been but I don't recollect it.

44. State if one of the topics most prominently considered between yourself and Mr. Walsh at that time was the fact that if a new company were organized it could sell gas profitably at a much lower price than that then charged by the old company and that an investment under those circumstances would be a good one?

Objected to as incompetent, immaterial and already answered.

A. No sir.

45. What was Mr. Walsh's business at that time?

A. President of the Chicago national bank.

46. Had he any other business so far as you know?

A. Yes, I think he was connected with the Indiana Stone Co. and Southern Indiana railroad.

47. What, if any experience, had he had in the gas business at that time, if you know?

Objected to as incompetent and immaterial.

A. I don't know.

48. What led you in the first instance to approach Mr. Walsh upon the subject you have mentioned?

879 Objected to as immaterial.

A. As I said, I had talked with Mr. Clarke and had a letter to Mr. Walsh and I was desirous of getting up a company.

49. What conversation passed between you and Mr. Clarke prior to that time with respect to the probability of interesting Mr. Walsh in the proposed enterprise?

Objected to as incompetent and immaterial.

A. Well, as I now recollect it, Mr. Clarke seemed to be of the opinion that if I could make Mr. Walsh feel it was possible to get sufficient frontage and a franchise that Mr. Walsh very likely would become financially interested in it.

50. Was Mr. Walsh a man of large or small means?

Objected to as immaterial.

A. My understanding was he was a man of large means.

51. At that time what, if you know, was Mr. Walsh's connection with the Peoria Gas Light and Coke Co. at Peoria?

Objected to as immaterial.

A. I don't think he had any interest there at all.

52. About what time was it when you interviewed him as you have testified?

Objected to as immaterial.

A. I think it was in February, 1899, or possibly January; it was in the winter.

53. Had you or had you not at that time any information whatever as to Mr. Walsh's interest, or absence of interest, in the Peoria Gas Light & Coke Co.?

Objected to as immaterial.

A. Yes sir, I had been informed he was sore at them.

Mr. IRWIN: Complainant objects to the foregoing answer as incompetent and moves the court to exclude it.

The MASTER: I think it ought to be stricken out.

880 54. (Int. 53 repeated to witness.)

A. No, I had not.

55. Had you any knowledge whatever upon the subject?

Objected to as immaterial.

The COURT: I think it already answered but he may answer again.

A. I had been informed he had had a row with Mr. Farrelly and Mr. Coffey.

56. Do you know what the foundation of the difficulty was?

Objected to as immaterial.

The MASTER: The previous question called for the interest or lack of interest he had in the other company and the witness answered he had been informed he had had a row with Farrelly and Coffey—Interrupted.

Mr. IRWIN: What the witness has been informed is not competent testimony and I move that it be stricken out.

The MASTER: The master considers simply the weight of the testimony, if it has no weight it will not be considered; I don't think the answer responsive to the question at all.

Mr. IRWIN: Yes, and it is something the witness knows nothing about. Now, Mr. Miller, answer the question, if you know.

The WITNESS: I only know what I have been told.

Mr. IRWIN: What you have been told is not evidence unless you know it as a fact.

57. What, if any statement, did Mr. Walsh make to you on the occasion to which you have referred with respect to his connection with the Peoria Gas Light & Coke Co., or any differences he had had with that company?

Objected to as incompetent and immaterial.

A. I don't remember whether it was at that first meeting, or at a subsequent one, but he expressed himself to me as not liking
881 Mr. Farrelly and Mr. Coffey, that he had trouble with them.

58. Did he explain to you, or state to you, the foundation for that trouble?

Objected to as incompetent and immaterial.

A. I think he did.

59. What was it?

Objected to same grounds.

A. He said he made a deal with them and they undertood to get the best of him by pinching out a lot of treasury holdings that should have gone with the property.

60. With reference to what property was he speaking at the time if you know?

Objected to same grounds.

A. The Peoria Gas Light and Coke Co.

61. Did he or did he not at that time inform you to what extent he was then interested in the then existing gas company in Peoria?

Objected to same grounds.

A. He certainly led me to believe from his talk that he was not interested in the company at all.

62. I understood from a former answer of yours that he referred to his deal respecting the old gas company property—was my understanding correct?

Ans. Yes sir.

Q. 63. What were the statements he made to you at that time with respect to the property of the old gas company so far as you remember them at this time?

Objected to as immaterial.

A. He told me he had bought the property and Farrelly and Coffey undertook to get the best of him in holding out a lot of stuff he should have had in and wanted to keep it themselves.

64. What, if any, bitterness at that time did he manifest
882 against the people you have mentioned?

Objected to as incompetent and immaterial.

The MASTER: That calls for a conclusion.

65. What did he state with reference to the position he occupied towards those people?

A. Well, he did not like them.

66. Did he say so?

Objected to as immaterial.

A. Yes, words to that effect.

67. State whether or not he gave that as a reason for desiring to become interested in the formation of a new company for the manufacturing and furnishing of gas in Peoria?

Objected to as immaterial.

A. I think it had some bearing on the case.

68. What did he say about it?

Objected to as immaterial.

A. I cannot quote his exact language, but my recollection is he expressed himself as satisfied to go in if I could get a sufficient amount of frontage and get a franchise or license as good as the old company had so as to be able to compete with them on the same basis they were doing business on.

69. What if anything did he say to you, or you to him, on that occasion with respect to the profits in a business of the character proposed to be inaugurated in Peoria?

Objected to as immaterial.

A. I don't remember that we talked of the profits of the business at all.

70. Up to that time, had anything concerning the probable profits of such an investment been considered by you in connection with anybody else?

Objected to as immaterial.

883 A. Yes, I think I had talked some with Sumner R. Clarke about it.

71. What was the conversation you had with him upon that question?

Objected to as immaterial.

A. I don't recollect all that was said but the purport of it was, he thought it was a good business.

72. Was that your judgment at the time?

Objected to as immaterial.

A. Yes sir.

73. And was it also Mr. Clarke's judgment?

Objected to as immaterial.

A. I think it was.

74. Upon what did you base your judgment that an investmen in a competing gas company in Peoria of the kind then in contem plation, would be a good investment?

Objected to as immaterial.

A. The gentlemen who were interested in the business all seeme to be satisfied with it, did not care to part with any of their interes in it, did not care to put any price on their holdings and it looke like it might be a good business.

75. As the proposition stood at that time, was it with reference t the organization of a new company for the purpose of entering int competition with the old company in the furnishing of gas for th purposes for which it was then used in Peoria?

Objected to as incompetent and immaterial.

A. Gas and electricity both.

76. Did you know at that time what territory was covered by the distributing mains of the old gas company?

Objected to same grounds.

A. I knew something about it.

884 77. What portion of Peoria and suburbs at that time were being served by the Peoria Gas Light and Coke Co.?

Objected to same grounds.

A. Parts of the city of Peoria and parts of the village of North Peoria.

78. Do you know what the gas consumption in Peoria was at that time?

A. No.

79. Had you any knowledge whatever in regard to it?

A. No.

80. What if any knowledge had you of the magnitude of the business then carried on by the old company?

Objected to as immaterial.

A. I did not know much if anything about the old company's business.

81. What, if anything, did you know about the cost of furnishing gas to consumers in Peoria at that time?

Objected to as immaterial.

A. I didn't know anything about it.

82. What if any information did you obtain from Sumner R. Clarke or John R. Walsh upon that question at about the time to which you have referred?

Objected to as immaterial.

A. I did not get any information.

83. Were these negotiations, to which you have referred, on your part, with reference to becoming an investor in the new company being organized, or were you look*ign* after the interests of others?

Objected to as immaterial.

A. I was looking after my own interests; was representing no one but myself.

84. How many times did you see John R. Walsh prior to
885 your becoming a subscriber to the capital stock of the complainant company?

Objected to as immaterial.

A. Possibly two or three times.

85. Where?

Ans. Chicago.

86. What induced you to go to Chicago to see him on the other occasions mentioned?

Objected to as immaterial.

A. As I stated, Mr. Walsh did not seem to be satisfied that frontage could be obtained; he seemed to express a fear that there could not be a sufficient amount of frontage secured to make it worth while to get up a company and I went to see him afterwards to talk the matter over and finally, I think, convinced him I was not overstating the matter.

87. What, if any, frontage had been procured prior to the time you became a subscriber?

Objected to as immaterial.

A. I had not secured any until the company was formed.

88. That is, until its organization was complete, I understand you to mean?

Ans. Yes sir.

89. What if anything did you have to do with securing the frontage?

Objected to as immaterial.

A. Everything; I had entire charge of the matter of securing frontage.

90. What, if any, representations were made by you, or by persons employed under you, to obtain the frontage which you did obtain?

Objected to as immaterial.

A. I told the property owners, that is, instructed the men I em-

ployed, to say to them, that if we could get a fair, liberal
886 franchise—of course we could not get it without they signed our frontage—that we would build a gas works and electric light plant in Peoria; then in some cases I did state to some people that Thomas Coffey, president of the old gas company, had said to me that if we built a works he would put the price of gas to 50 cents a thousand but we were going right ahead in face of that statement and build a works any way.

91. What, if any, representations did you make to those men at work under you, or to prospective consumers of your company, or otherwise, with respect to the prices at which you proposed to furnish gas if you procured a license?

Objected to as incompetent and immaterial.

A. I don't recollect that I stated any price whatever any more than Mr. Coffey had made this threat that if we built a works he would put the price at 50 cents a thousand and keep it there for two years.

92. What if any statement did you make to such prospective consumers, or to the men at work under you, by way of instruction with reference to the prices at which you would furnish gas as compared with those the old company was furnishing to its customers?

Objected to as immaterial and already answered.

A. I don't think I stated anything different from what I have stated here.

92. Then I understand from your several answers that in securing the frontage and making the preliminary arrangements for obtaining your license no representations were made with respect to the price at which gas would be furnished?

A. None.

94. Do you know whether or not those associated with you made any such representations?

Ans. I do not.

95. State whether or not that subject was ever discussed
887 between you and the others interested, or proposing to become interested, in the new company?

Objected to as immaterial.

A. Only in this way, if Mr. Coffey's word was good, of course, it meant lower prices if we built the works; of course, I looked over the papers brought in by the canvassers and if any one refused to sign I would find out the reasons why he had done so and sometimes I would go and see the parties myself; most of the refusals when I traced them down were from parties who were interested in the old company.

96. How many of the people signing for frontage did you actually see in person?

A. Very few; I had, I think, eight people at work and they got, I should say, probably 99 per cent. of the signatures.

97. Was there any one in charge of those eight men besides yourself, that is, to say, was there a sort of a foreman of those eight men?

A. No sir, I acted in that capacity.

98. Who were those eight men?

Objected to as incompetent and immaterial.

A. George W. Poole; James T. Wasson; Sam White, a brother of U. M. White, now deceased; A. J. Boylan; a man named Meinders—I don't know his initials; M. E. Fuller; Wm. F. Selby, and one other man whose name I don't recollect, but he is engaged in the coal business, his name was Woodford, I think, or Woolford.

99. You think those are all the men who had anything to do with procuring frontage?

Ans. No, Emil Auer.

100. Was not Mr. Newman also employed in that same service?

A. No sir.

101. How did these different people operate through the territory, jointly, or was it partitioned among them?

888 Objected to as immaterial.

A. I divided it out so as to get the best results—put them on different streets.

102. Where was that territory with reference to that in which the old company was then operating?

Objected to as immaterial.

A. Well, that in the heart of the city was in the same territory occupied by the old company and that in the outskirts were in some places where the old company did not have any pipe.

103. Are you able to state at this time what proportion of the territory you covered was then outside of that in which the old company was furnishing gas?

Objected to as immaterial.

A. I could not state definitely.

104. When with reference to your securing the frontage that you did, did Mr. Walsh consent to become a party interested in the new organization?

Objected to as immaterial.

A. He consented before I started to take frontage.

105. What was the primary reason for undertaking to interest him in the organization of the new company?

Objected to as immaterial.

A. As I stated before I thought it was a good thing to get up a company and wanted to interest him in it because I had been in-

formed he was a moneyed man who would go into things of that kind and also had an idea that he felt sore at Coffey and Farrelly of the old company.

106. From what source did you obtain your idea respecting his feelings toward Coffey and Farrelly? Had you learned it from him at Chicago on the occasion of your first interview?

889 A. No, I had heard it before.

107. Through what channel had that come to you?

Objected to as immaterial.

A. I think in my talks with Clarke.

108. State whether or not Mr. Clarke informed you that Mr. Walsh was already interested in the old company in some way?

Objected to as immaterial and incompetent.

A. I believe he did.

109. Did he tell you the extent of that interest or its nature?

Objected to same grounds.

A. Yes, he told me something about Mr. Walsh having made a deal with those people and their going back on their agreement with him and he was a little sore at them.

110. What, if anything, had Clarke to do with the handling of that deal on behalf of Walsh or otherwise?

Objected to same grounds.

A. Nothing that I know of.

111. What statement did Mr. Clarke make you with reference to it?

Objected to same grounds, and also because already asked and answered.

A. Well, as I have said, that Mr. Walsh felt sore at Mr. Coffey and Mr. Farrelly on account of the treatment he had received from them.

112. State whether or not at any of those interviews with Mr. Clarke, prior to the time you saw Mr. Walsh, Mr. Clarke informed you from what source he had obtained the information respecting this split between Walsh and Coffey and Farrelly?

Objected to same grounds as before.

A. I don't recollect that he said where he had learned it.

890 113. Did you know where it came from?

Ans. No sir.

114. What, if any, explanation did Mr. Clarke at any of those interviews give you with reference to this difficulty between Mr. Walsh and Mr. Coffey?

Objected to as incompetent and immaterial.

A. Nothing different from what I have stated, as I now recall it.

115. Within your knowledge, was Mr. Clarke at that time in any manner interested in the old gas company?

Objected to as immaterial.

A. I don't think he was interested in it.

116. Within your knowledge had he ever been interested in the old gas company?

Objected to as immaterial.

A. Not within my knowledge.

117. *Did* you know what knowledge Sumner R. Clarke at that time had regarding the gas business?

A. I do not.

118. What representations if any did he make to you respecting his knowledge of the business or the cost of construction, maintenance and operation and the profits generally?

Objected to as incompetent and immaterial?

A. I don't recollect that he made any statement on that.

119. What, if any statement, did Mr. Clarke make to you with reference to the desirability or undesirability of an investment in a gas company for the purpose of competing with the old company?

Objected to same grounds.

A. Why, he thought it would be a good thing to get up a company, that it was a good business.

120. State whether or not within your own knowledge Mr. Clarke at that time contemplated becoming an investor in it to a
891 considerable extent.

Objected to same grounds.

A. I think he did.

121. State whether or not he made known to you the extent to which he proposed to become interested?

Objected to same grounds.

A. He did not.

122. How many of the people, who became associated with you as stockholders or subscribers to stock in the new company, did you then know and how long had you known them?

A. I had known them all for a good many years.

123. Did you or did you not know of their financial standing and responsibility at that time?

A. I had an idea they were all responsible; they stood well in the community.

124. State whether those gentlemen in the main were men of large or small means?

A. Well, they would be mostly considered people of large means in a city like Peoria.

125. Where was your office at that time with reference to Summe R. Clarke's office?

A. I occupied the same office rooms with him at No. 211 Mai street.

126. And you had for some years before that, had you not?

A. 10 or 12 years.

127. And you still occupy the same offices?

Ans. Yes.

128. State whether or not when the subject of the proposed or ganization of the new company for the purpose in question came up and was discussed it was the intention and the expectation to make it a Peoria company?

A. Not entirely a Peoria company, no, but it was the inten
892 tion to have a number of Peoria people interested in it; I knew that John R. Walsh, at least, would be interested in it and he was not a Peorian.

129. What were the reasons you and your associates in Peoria sought to interest outside people in the organization?

Objected to as incompetent and immaterial.

A. Well, it was a deal of too much magnitude to expect to get people into that did not understand the business.

130. State whether or not there were any suscribers to the capital stock of the complainant company except those embodied in the articles of incorporation as shown by Exhibit 18?

Objected to as incompetent, immaterial, and not the best evidence.

Mr. TICHENOR: Of course, I am calling for your own knowledge, Mr. Miller.

A. (Witness referring to Exhibit "18.") These are all the subscribers.

131. State whether or not all of the subscribers to the capital stock of that company, as shown by Exhibit 18, were able to meet the stock subscriptions which they had made?

Objected to as incompetent and immaterial.

The MASTER: If he knows he may answer.

A. They were either able or had made arrangements so it would be taken care of for them.

132. My question is as to whether they were personally able to handle the stock subscriptions which they had made?

A. I don't know.

133. In making up the subscription list, shown by Exhibit "18," state whether or not any doubt was expressed as to the ability of any of those subscribers to respond to calls or assessments made upon them to the extent to which they had become liable?

893 Objected to as incompetent and immaterial.

A. I did not hear any expressions of doubt on the subject.

134. State what if anything you had to do with procuring the subscription list to the capital stock of complainant company?

Objected to same grounds.

A. I talked to some of the gentlemen before they subscribed about the matter.

135. Who were those gentlemen to whom you talked upon that subject?

Objected to same grounds.

A. I think I talked to Mr. O. J. Bailey; probably to Mr. Corning and to Philo B. Miles and Ben Warren, Jr.

136. What relations for some years had existed between you and the four gentlemen severally to whom you have just referred?

Objected to same grounds.

A. They were good friends.

137. What relations generally existed between you and all the other subscribers to the capital stock of this company?

Objected to same grounds.

A. They were all friendly.

138. Within your knowledge and present recollection, who was the first one to suggest the incorporation of a new company for this purpose?

Objected to same grounds.

A. I think Mr. F. W. Little suggested the formation of a company in this way.

139. Was that prior to the time any discussions had been had between you and Mr. Clarke, or any of the others, relative to the subject?

Objected to same grounds.

A. No, not prior to that.

894 140. My question was aimed at the initial point of the proceedings which ultimately resulted in the formation of the company?

A. My recollection is Mr. Clarke and I called on Mr. Irwin and talked this matter over.

141. Were you or was Mr. Clarke the prime mover?

Objected to as immaterial and irrelevant.

A. I advanced the idea of getting up a gas and electric company.

142. And was that the first thing that had arisen with respect to the advisability of the undertaking?

A. Yes sir.

143. Then it came from you and not from Clarke or anybody else?

A. Mr. Clarke, of course, could interest these people better than I could but I furnished the idea.

144. Upon what was that idea based and how did it originate with you?

Objected to same grounds.

A. There were two reasons for it. In the first place, I thought it was a good thing and I thought for me personally it would be a good thing because I naturally knew I would have the work to do and would get compensation for it. In fact, I thought it was a good thing for everybody.

145. To what extent were you instrumental in getting the other people, who later became associated with you as subscribers, interested in the projected new enterprise?

Objected to as incompetent and immaterial.

A. I talked to Ben Warren, Jr., considerably about it; I think I talked to Mr. Miles, Mr. Bailey and possibly Mr. Corning—I will not say sure about Mr. Corning.

146. How long were those conversations, or any of them, after the time when you first began to consider the advisability of the
895 formation of a new company?

Objected to same grounds.

A. I cannot tell exactly.

147. Did they follow pretty closely upon the beginning with you?

A. No.

148. How long was it before you took up the subject with any person and expressed your ideas with reference to the subject of forming a competing company?

Objected to as immaterial.

A. To the best of my recollection, I talked with Mr. Warren probably two weeks before we met in the Niagara building to complete the organization of the company.

150. Was he the first one to whom you addressed yourself upon the subject?

Objected to as immaterial.

A. Yes sir.

151. What was the nature of your conversation with Mr. Warren upon this subject?

Objected to as incompetent and immaterial.

A. I told him we were contemplating getting up a company and I wanted him to be one of the parties interested because I thought it would be a good thing for him.

152. During the time that elapsed from your first conception of the idea to the time of this conversation with Warren, what investi-

gation, if any, had you made with respect to the possibility, in the way of profits or otherwise, of a competing company in Peoria?

Objected to same grounds.

A. I had not made any investigation.

153. What report, if any, did you make to Mr. Warren at that time as to the advisability of such an investment?

896 Objected to same grounds.

A. I told him Mr. Clarke and Mr. Walsh were going into it and I would like to have him go in; I don't recollect all that I said to him, of course, but the purport of it was I believed it would be a good thing and wanted him in it.

154. In what way did you represent to him it would be a good thing—what did you say to him upon that subject?

Objected to same grounds.

A. I cannot recall everything I said to him but the purport of it was it was a good business and he was a personal friend of mine and I would like to have him interested.

156. Did you know at that time what were the prices charged in Peoria for both fuel and illuminating gas?

Objected to same grounds.

A. I did.

157. What, if anything passed between you and Mr. Warren at that time with reference to the prices paid for gas in Peoria?

Objected to as incompetent, immaterial, irrelevant.

A. I don't recollect that the matter of prices was brought up.

158. What information did you impart to him at that time which bore upon the probable profits to be derived from the operation of a competing gas company in Peoria?

Objected to same grounds as before.

A. I think in my talk I stated that Mr. Walsh was a man who knew what he was about and would not come down here and put his money in anything unless he thought there was money to be made.

Complainant objects to the foregoing answer as not responsive the witness saying he thinks he said so and so and moves the court to exclude it.

159. Did you or did you not then have any figures per-
897 taining to the subject matter which you considered or discussed with Mr. Warren?

Objected to as incompetent, immaterial, irrelevant.

A. I did not.

160. In how many *interprises* prior to that date had you been interested in with Mr. Warren, if any?

Objected to same grounds.

A. I had been in one real estate deal with him prior to that ti I should say some six or seven years before, that was the only I recollect of.

161. Was that with reference to Peoria property?

Objected to as immaterial.

A. Yes sir.

162. What information, if any, had Mr. Warren at that time far as disclosed by his conversation, touching the question of pr able profits from such an enterprise?

Objected to same grounds.

A. I don't know.

163. Had Mr. Warren been a party interested in the old gas c pany within your knowledge?

A. I think he had not.

164. State whether or not he had any knowledge, technica otherwise, so far as you know, of the production and distributio gas substantially as it was done in the city of Peoria at that ti

Objected to as incompatent and immaterial.

A. I do not know.

165. So far as any statements were made by Mr. Warren to either then or subsequently, what knowledge had he of the ga dustry at the time he became a subscriber to the capital stoc complainant company?

898 Objected to as incompetent and immaterial.

A. I don't know that he had.

166. When with reference to the time of this conversation which you have referred with Mr. Warren did he decide to bec a stockholder, if you know.

Objected to as immaterial.

A. He felt favorably towards going into it when I first mentio it to him at the time.

167. What reasons if any did he then give for his opinion?

Objected to as incompetent, immaterial and irrelevant.

A. I don't recollect that he gave any special reasons.

168. I think you stated you saw him two or three times, peri before he finally subscribed—is my recollection correct?

A. I think during the two or three weeks I met him a nu of times.

169. Did you go to his office to find him or did you meet hi other places?

A. Sometimes I met him at his office and sometimes at other places.

170. What were the subsequent conversations you had with him—you have testified more particularly with reference to the first one?

Objected to as incompetent, immaterial and irrelevant.

A. I cannot state exactly what my conversation was; we talked about matters generally and about whether the prospects of the company was progressing.

171. During the two weeks to which you have referred what if any additional information did you require with respect to the proposed organization of the company?

Objected to as immaterial.

A. Well, I found that the public, those I talked with, were all favorable towards the new company being formed; one of
899 the reasons being that those fellows had had their own way here for forty years, had done what they pleased with us and they would like to see somebody else get in the field.

172. Were those expressions of opinion based upon the probable effect to themselves or otherwise?

Objected to as incompetent and immaterial.

The MASTER: It ought to appear first the witness knows.

A. Of course, I could not tell what was in their minds but that is what they talked.

173. That is, that it would be beneficial to them?

A. That they would be glad to see us form a company and go into the business.

174. What were their reasons so far as they gave them?

Objected to as immaterial, irrelevant and incompetent.

A. Some were sore at Coffey, some were sore at Farrelly and some had been treated badly when they made complaints about their gas bills and all that kind of thing.

175. State whether or not any of those reasons given to you during your investigations, as you have just testified, were based upon a probable reduction in the price of gas in Peoria, or whether that was given as a reason for desiring a competing company.

Objected to same grounds.

A. Possibly so; it was in some cases; I told them of my talk with Thomas Coffey and his threat to put the price to 50 cents if the works were built.

176. Is it or is it not true that that feature of the situation was prominently presented by you to the different people with whom you conversed on the subject?

Objected to same grounds.

A. I did not keep it in the background, sure.

900 177. In a general way, with how many people did you converse during that period in the manner you have just described?

Objected to as immaterial.

A. I could not say.

178. Were it many or comparatively few?

Objected to as immaterial.

A. There was not a great many.

179. Among what class of people did you investigate?

Objected to as incompetent, immaterial, and assuming that he made an investigation.

A. Oh different classes.

180. What differences of opinion did you find among the different people with whom you conferred upon that subject in the manner you have just described?

Objected to as immaterial.

A. There was not any difference of opinion, they were all unanimously glad to see us going ahead with it.

181. To what extent did you participate in procuring the subscription list to the capital stock of this company?

Objected to as immaterial, incompetent and already answered.

A. Outside of Ben Warren's subscription, I don't know that I influenced anyone; I talked to Mr. Bailey and Mr. Miles and perhaps Mr. Corning, although I am not certain about Mr. Corning; I did not spend much time with them.

182. To whom, if to any of them, did you actually present this subscription list for their signatures?

Objected to as immaterial.

A. My recollection is the list was in the office of Messrs. Irwin & Stemmons and was signed there by all the gentlemen who had been seen on the matter about the same time.

183. State whether or not you personally saw any of the 901 subscribers other than those whose names you have specifically mentioned.

Objected to as immaterial.

A. I saw all of the gentlemen whose names are on this paper present at that meeting.

184. When, with reference to the time they became subscribers, if at all, did you see them with reference to becoming such subscribers or becoming interested?

Objected to as immaterial and incompetent.

A. I met them all in the office before the papers were signed and talked with a number of them.

185. Covering what period of time did you do that?

Objected to as immaterial.

A. To the best of my recollection within two weeks, possibly less time than that.

186. That was the two weeks immediately preceding the completion of the subscription list?

Ans. Yes sir.

187. What portion of your time, during those two weeks, did you devote to the preliminaries of procuring this subscription list?

Objected to as immaterial.

A. I don't know exactly but not very much time.

188. Who else, if anyone, was at work in the same direction during that period?

Objected to as immaterial.

A. Sumner R. Clarke.

189. Do you know personally to what extent he gave his personal attention to that matter?

Objected to as immaterial.

A. I think he saw all these gentlemen personally.

190. When, with reference to these interviews you had with John R. Walsh, did you and Mr. Clarke do this work with reference to obtaining the subscription list—I refer now to what you have just testified to as covering two weeks or so.

902

Objected to as immaterial.

A. My recollection is when we got ready and decided to go ahead with the matter that Mr. Clarke wound up these people in two or three days.

191. Was that before or after you had your conference with Mr. Walsh?

Objected to as immaterial.

A. Afterwards.

192. State whether or not before the subscription list was made up there was any agreement between Mr. Walsh and the Peoria gentlemen, proposing to become associated with the company, as to his becoming interested in its formation and the prosecution of the industry?

Objected to as incompetent, immaterial and irrelevant.

The MASTER: I think the question ought to be limited to the people that did become interested.

Mr. TICHENOR: That is what I mean, of course.

The MASTER: The witness may answer.

A. I don't know of any of the others except Mr. Clarke having any understanding with Mr. Walsh.

192. Did you personally know of that understanding?

Objected to as incompetent and immaterial.

A. Yes sir, I think Mr. Clarke told me.

Complainant objects to the foregoing answer as incompetent and hearsay and moves the court to exclude it.

193. Did you also know what the arrangement was?

Objected to as incompetent and immaterial and because the witness has already answered his information is what somebody else told him.

903 A. My recollection is—Interrupted.

The MASTER: No, you are asked what you know about it of your own knowledge.

The WITNESS: I know what I heard Mr. Clarke say.

194. State whether or not that arrangement or agreement between Mr. Clarke and Mr. Walsh was verbal or in writing?

Objected to as incompetent and immaterial.

A. I don't know.

195. What was the arrangement?

Objected to as incompetent, immaterial and calling for hearsay.

The MASTER: I doubt the competency of that at the present time.

Mr. TICHENOR: Very well, I will not press it now.

196. State whether or not in any of your interviews with Mr. Walsh he agreed or promised to become a subscriber to the capital stock of complainant company?

Objected to as immaterial and incompetent and the subscription list would show whether he subscribed or not.

A. He certainly gave me to understand he would be interested in the company.

197. State to what extent he told you he would become interested in this company?

Objected to as immaterial and incompetent.

A. I don't remember that he stated to what extent.

198. State whether or not when you were securing prospective subscribers to the subscription list you had any information as to the extent to which he would become interested, or had agreed to become interested, and if so, whether you indicated that to any of those prospective subscribers?

Objected to same grounds as before.

A. I think I did to Ben Warren, Jr.

199. What did you tell him?

(Objected to same grounds.)

04 A. I think I told him Mr. Walsh would take any stock that was not subscribed by the Peoria people.

200. What if any figures did you give him?

Objected to same grounds.

A. I don't recollect that I gave him any figures.

201. State whether or not you know from anything Mr. Warren id at that time such statement on your part had anything to do ith his determining to become a subscriber?

Objected to same grounds.

The MASTER: I don't think that material but if you want to press the witness may answer subject to the objection.

Mr. TICHENOR: I would like to have it answered.

A. I don't know.

202. At the time Mr. Walsh stated to you that he would take any subscribed stock, did you or did you not have information as to w much would be subscribed by Peoria parties?

Objected to as incompetent, immaterial and assuming that Mr. alsh made a statement of that kind.

A. I did not say he did; I got my information from Mr. Clarke.

203. Mr. Walsh never made any such statement to you?

A. He may have made it but I don't recall it.

204. Were you ever present at a conference between Walsh and rke concerning this subject matter?

A. Yes sir.

205. Where was that and when?

Objected to as immaterial.

A. In the private room of the Chicago national bank at Chicago.

206. Had you and Clarke gone to Chicago together on that occan?

Ans. I think so.

5 207. For what reason had you gone there?

Objected to as immaterial.

A. To talk the situation over—this gas and electric light matter.

208. What conversation passed between you three parties at that e?

Objected to as immaterial, incompetent and irrelevant.

A. I cannot recollect all that passed, but Mr. Walsh seemed to be ubtful about my being able to do what I said I could in the way getting frontage consents and he asked me if our streets were not

paved and if I didn't think it would be up hill business to get co
sent to tear them up and things of that kind

209. What was the specific reason, if any, that induced you an
Clarke to go to Chicago on that occasion to confer with Walsh?

Objected to same grounds.

A. We could talk things over better than we could correspon
about it; I don't know of any special reasons for us going there e
cept to talk over the general situation.

210. What, if any conclusion was reached at the time of that co
ference so far as it was expressed by the parties present?

Objected to same grounds.

A. As I now recollect it, Mr. Walsh sent for Mr. Little who wa
living at Akron, Ohio, and he came to Chicago and we stayed ove
until the next day and talked more about the case.

211. Were you present at the interview between Little and Walsh

Objected to as immaterial.

A. I was.

212. Was Clarke also present?

Ans. He was.

213. Where did Mr. Little reside at that time?

Objected to as incompetent and immaterial.

A. Akron, Ohio.

906 214. What, if any particular knowledge, at that time, had
Mr. Little of the gas business in Peoria and of the situation
generally in that regard so far as your own knowledge extends?

Objected to as immaterial.

A. Well, I learned during the conference that he had been here
and looked the situation over some years before—about two years
before, I think.

215. In whose interests was that disclosed?

Objected to as immaterial.

A. I don't know.

216. Was that the first time you ever met Mr. Little?

A. It was.

217. Was that the same Mr. Little who is now connected with the
complainant company?

Ans. Yes sir, F. W. Little.

218. And who has already testified in this case?

A. I believe so.

219. How long did that conference last?

Objected to as immaterial.

A. Mr. Little came to the Grand Pacific hotel shortly after seven

o'clock in the morning and came down to Peoria with us in the evening at 5:45; we were together nearly all day.

220. Do you know what particular reasons, so far as it was stated, Mr. Walsh had for sending for Mr. Little on that occasion?

Objected to as immaterial.

A. Mr. Little was supposed to be an experienced gas man and as I understood it was operating the gas works at Akron, Ohio, for Mr. Walsh at that time.

Complainant objects to the foregoing answer as not responsive, being simply the understanding of the witness and moves the court to exclude it.

907 221. What questions pertaining to the proposed organization of this company in Peoria, were discussed at that time between Walsh, Little, Clarke and yourself in your presence?

Objected to as immaterial.

A. Well, we talked about the number of miles of frontage consents that could be secured; also whether or not a fair and reasonable ordinance could be had.

222. What, if any, information did Mr. Little disclose as to the miles of frontage in Peoria that might be obtained?

Objected to as immaterial.

A. As I now recollect he stated we should have at least 20 miles of frontage in order to be able to do a satisfactory business.

223. What if any special knowledge as disclosed by that discussion did Mr. Little then have with respect to the probability of obtaining what you have designated as a reasonable ordinance in the city of Peoria?

Objected to as incompetent and immaterial.

A. I don't know that he had any knowledge any more than my statement that I believed a fair ordinance could be obtained and also a sufficient amount of frontage.

224. Upon what features of the pending question did Mr. Little advise with the other gentlemen present at that time with respect to the proposed organization of a competing company in Peoria?

Objected to same grounds.

A. As I now recollect it he stated he would not want an ordinance here unless it was liberal as to the length of time it should run and no restriction as to the price to be charged for gas.

225. State whether or not you then advised Mr. Little concerning the prices at that time charged by the Peoria company?

Objected to same grounds.

A. I don't think I did.

908 226. What if anything did Mr. Little advise as to the probable outcome of the company financially through entering into competition with the one already in the field so far as he made any statement whatever?

Objected to same grounds.

A. I don't recollect that he made any statement at that time about it.

227. What knowledge at that time had Mr. Little of the gas consumption in Peoria?

Objected to same grounds.

A. I don't know.

228. Have you now stated all the subjects upon which Mr. Little gave any advice, or made any suggestions, respecting the proposed new company during the interviews which were carried on that day?

Objected to same grounds.

A. All I think of.

229. State if it is not true that on that occasion, in the presence of the three gentlemen whose names you have given, he stated to you that gas could be furnished in Peoria by a competing company at very much lower prices than those then charged by the old company and still make a handsome profit?

Objected to as incompetent, immaterial and leading.

A. I don't recollect any such statement.

230. What if any figures did Mr. Little give these gentlemen at that time with respect to the cost of production and delivery of gas in this territory?

Objected to as incompetent and immaterial.

A. I don't recollect that he gave any figures.

231. What if any discussion was there among you gentlemen upon that question during that day?

909 Objected to as incompetent, immaterial and assuming there was a discussion of that question.

A. As I remember the conversation, it was I might say entirely devoted to the kind of ordinance that could be had and the amount of frontage that could be secured.

232. I am asking you now what information upon those questions Mr. Little brought into that meeting so far as was discussed from anything he said?

Objected to as incompetent and immaterial and assuming there was something said about the matter.

A. I don't recollect that he brought in any statements or figures.

233. And those were the only two subjects under discussion at that time were they?

Objected to as immaterial.

A. So far as I recall.

234. How long was that meeting in session?

Objected to as immaterial.

A. The first meeting at the Grand Pacific hotel between Mr. Clarke, Mr. Little and myself commenced after breakfast and lasted until about 9 o'clock in the morning, which would be about an hour and a half, I should say; we got to Mr. Walsh's bank probably about 11 o'clock in the forenoon and talked awhile and then again after dinner.

235. How much would the time aggregate all together?

A. Mr. Clarke, Mr. Little and I were together pretty much all day but the talk in Mr. Walsh's office did not probably all told exceed an hour and a half to two hours at the different times.

236. Is it not true that one of the principal objects which induced you and Mr. Clarke to go to Chicago on that occasion was to get information and facts relative to the cost of gas production and delivery?

Objected to as incompetent and immaterial.

A. No sir, not as I recollect it.

237. State whether or not that was not one of the principal reasons why Mr. Walsh called Mr. Little from Akron as stated by Mr. Walsh prior to the time he sent for him?

Objected to as incompetent, immaterial and already asked and answered.

(Question withdrawn.)

238. Prior to the time that Mr. Walsh sent for Mr. Little on that occasion, did he express himself to you or to Mr. Clarke in your presence touching the reasons why he desired to call Mr. Little in?

Objected to as immaterial.

A. I think he did.

239. What reasons did he give?

A. He wanted to have Mr. Little hear what Mr. Clarke and I had to say about the situation down here.

240. Anything further?

A. He requested Mr. Little to come down with us and look the matter over himself.

241. I am speaking of the reasons?

A. Yes, he wanted to have Mr. Little hear our story.

242. Were those the only reasons he gave?

Objected to as immaterial.

A. That is all I remember of.

243. Is your recollection of past events reasonably good generally?

Ans. I think so.

244. State whether or not up to that time Mr. Walsh had made any representations to you to the effect that he was skilled in the manufacture and distribution of gas and particularly with
911 reference to the cost of it?

Objected to as incompetent and immaterial.

A. He made no such statement to me.

245. State whether or not within your knowledge he was familiar with gas conditions in Peoria at that time?

Objected to as immaterial.

A. Yes he seemed to know something about the gas situation in Peoria.

246. Upon what features of that question did he express himself at that time and what did he say?

Objected to as immaterial and incompetent.

A. I don't remember all that was said, but he had made an investigation here a year or two before with a view of buying the old gas plant.

247. You say you don't remember what statement he made pertaining to those questions?

Ans. No.

248. Did he or did he not state that he knew the prices paid for gas in Peoria at that time?

Objected to as immaterial.

A. He may have done so I don't remember.

250. State whether or not you, or Mr. Clarke in your presence, acquainted him with the charges made for gas in Peoria both for fuel and lighting purposes?

Objected to as immaterial.

A. I think it possible; we talked about it.

251. Do you remember at this time what those prices were?

Objected to as immaterial.

A. I do.

252. What were they?

Ans. $1.35 for illuminating gas; 85 cents for fuel gas with a discount of 10 cents per thousand for prompt payment before the 10th of each month.

912 253. You are certain are you that those were the prices which prevailed at that time by the old company?

A. Before we came into the field those were the prices, yes.

254. State if it is not true that the old company from the time it

reduced fuel gas to 75 cents per thousand until after your company began operations, it never asked 85 cents for fuel gas but always 75 cents without any reduction for payment before the 10th of the month?

Objected to as incompetent and immaterial.

A. No, I do not so understand it; I think it was 85 cents with 10 cents discount.

255. Were you using fuel gas during any part of that period?

A. I think I was.

256. And you paid the bills, did you?

Ans. I did.

257. State if your recollection upon that question is just as good and just as certain as it is with reference to the other matters concerning which you have testified?

A. I am not infallible; I may be mistaken about it.

258. I asked you whether it is as good with reference to that question as it is with reference to the others?

A. Possibly so.

259. Are not you prepared to state whether it is or is not?

A. No. I know the net amount I paid for fuel gas was 75 cents and I was under the impression there was a 10 cent discount the same as it was on the illuminating gas; as to the other matters I have testified about I know what I have stated.

260. My question is as to the accuracy of your recollection with reference to that fact as compared with your recollection in relation to other facts about which you have testified?

A. My recollection as to other matters is more correct than it is about the price of the gas; I may be mistaken as to that.

913 261. Do you remember about how long prior to that time it was the old company reduced the price of fuel gas to the minimum before your company came into operation?

Objected to as incompetent and immaterial.

A. I do not.

262. Are you able to state whether it was some years before or only a short time before?

Objected to as immaterial.

A. No I could not.

263. How long within your present recollection at the time your company organized had the price of fuel gas in Peoria been 75 cents per thousand feet?

Objected to as immaterial.

A. I don't know.

264. At the time you and your associates were considering the question of the organization of the complainant company, what proportion of the gas consumed in Peoria was for fuel purposes?

Objected to as immaterial.

A. I don't know.

265. State whether or not you had any knowledge upon that question at the time you were negotiating with Mr. Walsh and others relative to the organization of this company?

Objected to as immaterial.

A. I had been told that the illuminating gas used exceeded the fuel gas somewhat at that time.

Complainant objects to the foregoing answer as hearsay and moves the court to exclude it.

266. Had you any personal knowledge or knowledge from reliable sources as to the proportion of fuel gas to the whole consumption in Peoria at that time?

Objected to as incompetent and immaterial and leaving it
914 to the witness to judge as to what were reliable sources?

A. Only from hearsay.

267. Who, if anyone, among your associates in the organization of this enterprise—I refer now to those who subscribed for the stock—was at that time skilled in the gas industry?

Objected to as immaterial.

A. F. W. Little was the only gentleman I knew of.

Mr. IRWIN: He is referring to the subscribers of the stock.

The WITNESS: If that is so, there was not any that I know of.

268. Where did Mr. Little reside during the time you were engaged in your preliminary arrangement for the organization?

A. In Akron, Ohio.

269. How frequently from the time you took up the idea of forming a company to the time of its completion did you see Mr. Little personally?

Objected to as immaterial.

A. To the best of my recollection Mr. Little came down to Peoria with Mr. Clarke and I from Chicago and remained a couple of days.

270. Was that the occasion to which you have already referred?

A. Yes.

271. Was that the only time you saw him during that period?

Objected to as immaterial.

A. I think it was the only time I saw him but I talked with him over the telephone once that I remember of.

272. Did you call him up or did he call you on that occasion?

Objected to as immaterial.

A. I think Mr. Clarke called him up.

273. And did Mr. Clarke talk with him also?

Objected to as immaterial.

A. Yes sir.

915 274. For what purpose was he called if you know?

Objected to as immaterial.

A. It was while we were getting frontage and I made him a report of the frontage I had secured and asked his advice, I think about going on other streets.

Complainant objects to the latter part of the foregoing answer as not responsive and immaterial and moves the court to exclude it.

275. What interest if any had Mr. Little in your company at that time or in your proposed company?

Objected to as immaterial and incompetent.

A. I understood he was to be interested in the company as a stockholder.

Mr. IRWIN: The complainant objects to the foregoing answer as not responsive and not stating the knowledge of the witness and moves the court to exclude it. I wish, Mr. Miller, you would confine your answers to what you know and not state what you think or have heard.

Mr. TICHENOR: You should not attack your own secretary so viciously.

Mr. IRWIN: I think his testimony would be better if he stuck to his own knowledge of affairs.

The MASTER: The witness is intelligent and I think he can take care of himself. The question calls for your personal knowledge, Mr. Miller.

The WITNESS: As I stated before I understood he was to become interested and be a stockholder in the company.

(Mr. TICHENOR:)

276. Had he any interest then within your knowledge or had it reached a point yet where any interest had become definite?

Objected to as incompetent and immaterial.

916 The MASTER: I think it competent in view of the former answer of the witness.

A. It had not reached that point.

277. State whether or not prior to the time you had this conversation with Mr. Little over the telephone Mr. Walsh had instructed you or directed you, to confer with him in matters pertaining to obtaining frontage or any other matters preliminary to the organization of the company?

Objected to as incompetent and immaterial.

A. I think he had.

278. You may state the scope of that instruction as given by M Walsh—to what subjects did it extend.

The MASTER: I think your question objectionable, Mr. Tichenc in that it assumes it was an instruction; if he gave any direction that is one thing, but whether that amounts to instructions or not another thing.

Mr. TICHENOR: What I am trying to find out is what Mr. Wals said. I withdraw the question.

279. What did Mr. Walsh say with reference to that subject?

Objected to as immaterial.

A. As I recollect he told me to work with Mr. Little.

280. Did he specify any particular line in which you were to con sult Mr. Little or confer with him or was his statement only of general character?

Objected to as incompetent and immaterial and if instruction were given what he said would be the best evidence; it is for th court to determine from what was said whether it was an instructio direction or request.

A. Of a general character.

Mr. IRWIN: I move to exclude the answer as incompetent, becaus the only competent evidence would be as to what was said, i anything, and it is for the court to determine the purpor
917 and what was meant by what might have been said.

The MASTER: The answer is responsive and is certainly competent if the question is. The answer may stand.

281. State as accurately as you now remember it what Mr. Walsh said upon that subject?

Objected to as immaterial.

A. As I said before, he said for me to work with Mr. Little

282. State whether or not you had any correspondence with Mr Little touching the matters leading up to the organization of the company?

Objected to as immaterial.

A. No.

283. When, with reference to the time of the completion of the organization, of complainant company did Mr. Little become iden tified with it in an official capacity, if at all?

Objected to as immaterial.

A. It seems to me that the first meeting we had of the directors after the company was organized he was elected a director and vice president and manager.

284. Does your answer refer to the meeting held in the Niagara building at the time of the original election of directors?

Objected to as immaterial.

A. No, my recollection is Mr. Little was not present at that meeting.

285. Was he present at the time he was elected vice president and manager?

Objected to as immaterial.

A. The first meeting that I recollect of Mr. Little being present at was held at our office in the back room No. 211 Main St.

286. And that, you think, was later than the meeting at which the directors were originally elected?

918 A. It is possible he was elected before that, but my recollection is that was the first time he showed up in a meeting.

287. Do you remember at this time who constituted the first board of directors of your company?

Objected to as immaterial and incompetent, the charter being the best evidence of that.

A. I recollect most of them I think.

288. Who were they?

A. (Witness referring to Exhibit "18") Sumner R. Clarke; Ben Warren, Jr.; F. T. Corning; Oliver J. Bailey; George H. Littlewood; Theodore J. Miller and Philo B. Miles.

289. Where did all those gentleman reside at the time of their election as directors?

Objected to as immaterial.

A. They all resided in Peoria.

290. How long had they resided here, if you know.

Objected to as immaterial.

A. With the exception of Mr. Littlewood, I should say they had all resided here at least 20 years.

291. How many of those seven gentlemen, so far as your knowledge extends, were personally acquainted with Mr. Little at that time?

Objected to as immaterial.

A. I don't know.

292. Up to the time Mr. Little was elected vice president and manager as you have stated, who of those directors were personally acquainted with him, if you know?

Objected to as immaterial and already answered.

A. Sumner R. Clarke, was acquainted with him and myself.

293. Do you know of any others in the directory that were?

A. I don't know.

919 294. What knowledge, if you know, had the other directors of Mr. Little's capability or experience in the gas industry?

Objected to as immaterial.

A. I don't know.

295. State whether or not prior to the time he took up the duties of his office in connection with your company Mr. Little had ever been a resident of Peoria or its immediate vicinity?

Objected to as immaterial.

A. I don't think he had.

296. How did it happen if you know that he was elected to the offices you have mentioned?

Objected to as immaterial.

A. He was considered a desirable man to have in the position of manager by all that voted for him.

297. Do you know that of your own knowledge?

A. Yes sir, in a general way it had been discussed and he was said to be a good man for the place.

298. From what source or sources did the remaining five of those directors obtain their information respecting Mr. Little's qualifications for the place?

Objected to as immaterial.

A. I think principally from Sumner R. Clarke.

299. Had they any other knowledge of him than that coming through Mr. Clarke or yourself?

Objected to as immaterial.

A. None that I know of.

300. When within you knowledge did Mr. Clarke first meet Mr. Little?

Objected to as immaterial.

A. Mr. Clarke met Mr. Little in Sioux City, Iowa, at the time he was married: Mr. Little was at Mr. Clarke's wedding 10 or
920 12 years ago.

(Mr. IRWIN:)

301. Were you there?

Ans. No I was not.

(The SAME:)

302. How do you know it then?

Ans. Mr. Clarke told me.

(Mr. TICHENOR:)

303. Within your knowledge when did Mr. Clarke first become acquainted with Mr. Little?

Objected to as immaterial.

A. They were acquainted when Mr. Little walked into the Grand Pacific hotel the morning I have spoken of.

304. At whose suggestion was Mr. Little elected to the offices you have mentioned?

Objected to as immaterial.

A. My recollection is that Mr. Clarke recommended him as a good man for the place.

305. State whether or not that was at the meeting at which he was elected or at some preceding meeting?

Objected to as immaterial.

A. It may have been at a preceding meeting.

306. I think you have stated you first met him in Chicago on the occasion concerning which you have testified?

A. Yes sir, that was the first time I ever saw him.

307. You took the stock, did you not, which you subscribed for?

Objected to as immaterial.

A. Part of it.

308. And you have been a stockholder of that company ever since then and are now?

Ans. Yes sir.

309. State whether or not prior to your election as secretary of complainant company you received any compensation for your services in connection with its organization?

Objected to as immaterial and incompetent.

A. I did.

921 310. Who paid you?

Objected to same grounds.

A. Sumner R. Clarke.

311. On how many different occasions prior to the election to which I have referred did he make payments to you?

Objected to same grounds.

A. I should say four or five times.

312. State whether or not Mr. Clarke paid to you any money other than for your services—I mean by that, money that belonged to others that had been at work in the organization or in obtaining frontage, for services they had rendered?

Objected to same grounds.

A. My recollection is he did not pay any money to me direct for the solicitors I had employed but he furnished the money for their pay.

313. Up to the time of your election as secretary who paid for all services rendered so far as they pertained to obtaining frontage and any work that was preliminary to the organization of the company?

Objected to as immaterial.

A. Sumner R. Clarke.

314. Do you know of your own knowledge whether he made those payments out of his own funds or out of funds that came from some other source?

Objected to as immaterial.

A. Out of his own funds.

315. Do you know of your own knowledge whether such funds so paid out by him have ever been repaid to him?

Objected to as immaterial.

A. I could not say of my own knowledge.

316. What if any action has ever been taken by the board
922 of directors of your company with your knowledge with respect to refunding to him any sums of money by him so advanced.

Objected to as incompetent and immaterial.

A. I suppose it has been refunded, but I don't know it of my own knowledge.

317. What are and have been your duties as secretary of that company and what have you actually performed?

Objected to as immaterial.

A. I have kept the minutes of the meetings, signed checks in Mr. Little's absence and made myself generally useful.

318. Have you authority from the board of directors to sign checks in the absence of Mr. Little?

Objected to as incompetent and immaterial.

A. I don't know really whether I have or not but the bank understands it and I sign checks and they are paid.

319. What portion of the time, since you have been secretary of that company, have you devoted to that service?

A. I cannot tell but I have been there nearly every day and if I do not happen to be there when wanted I go there on telephone call.

320. Are you or are you not regularly employed in that office?

Objected to as immaterial.

A. No, I don't consider myself as regularly employed, that is to the extent of putting in my time there only as required.

321. Have you or have you not any regular hours for duty at that company?

Objected to as immaterial.

A. No, I have not.

322. Have you ever had?

(Objected to as immaterial.)

A. Yes, for awhile I went around there every morning about 10 o'clock and did what was required of me in the way of
923 signing pay checks or signing checks for freight or anything of that kind that was necessary.

323. State whether or not during the time you have been such secretary you have had a regular salary?

Objected to as immaterial.

A. I have received pay regularly every month.

324. State whether or not the members of the board of directors have also had regular salaries as directors that have been paid?

Objected to as immaterial.

A. Not that I know of.

325. State whether or not they have within your knowledge received any compensation for their services as directors?

Objected to as immaterial.

A. Not that I know of.

326. State whether or not any resolution or motion has ever been passed by the board of directors touching their compensation for services as directors?

Objected to as immaterial and incompetent.

A. I don't recollect.

327. If any such resolution or motion had been passed, would you know of it?

Objected to same grounds.

A. I probably would.

328. State whether or not since your election as secretary you have kept all the minutes of the meetings?

Objected to same grounds.

A. I have kept them.

329. State whether or not the record book, containing the minutes of the proceedings before the board of directors, has at all times during your incumbency of the office been in your custody?

Objected to same grounds.

924 A. The minute book has been in the vault of the company but of course I have had access to it at any time.

330. In whose handwriting have those minutes been entered?

Objected to same grounds.

A. A good many of them are in the handwriting of Miss Lizzie Pulsipher a clerk.

331. Who has signed them if anyone?

Objected to same grounds.

A. I have.

Adjourned by agreement until Friday February 21, 1902, at 10 o'clock a. m.

United States court room, Government building.

PEORIA, ILLINOIS, FRIDAY, *February* 21, 1902—10 a. m.

Parties met pursuant to adjournment.
Present same as before.

Direct examination of THEO. J. MILLER resumed by Mr. Tichenor:

332. What is the regular time for the meeting of the board of directors of complainant company and what has it been since its organization?

Objected to as incompetent and immaterial.

A. I don't really remember.

333. How many times per month?

Objected to same grounds.

A. I really don't know.

334. How frequently has such meetings been held?

Objected to same grounds.

A. Meetings have been held whenever there was any business to transact, averaging I should say probably once a month.

335. Does your answer cover the time from its organization up to now?

Objected to same grounds.

925 A. Yes sir.

336. State whether or not all of the directors regularly attend all those meetings and have since the organization of the company.

Objected to same grounds.

A. Most of those that live in the city attend.

337. Were there any members of the first board of directors that were not residents of Peoria?

Objected to same grounds.

A. Not of the first board.

338. When was your second board of directors elected or when were any changes made in the directory after the organization of the company?

Objected to same grounds.

A. There were some resignations and the vacancies were filled.
339. Do you remember when that was?

Objected to same grounds.

A. I cannot be exact but it was something like a month or two perhaps after the organization.
340. Who were those directors that resigned?

Objected to same grounds.

A. Philo B. Miles was one of the gentlemen who resigned and I believe O. J. Bailey.
341. Do you remember any others?
Ans. Not that I think of.
342. State whether those two gentlemen were present at the time they were elected directors of the company?

Objected to same grounds.

A. I think they were.

343. State whether or not there was any arrangement or
926 understanding at that time with reference to their continuing in the directory or otherwise?

Objected to same grounds.

A. I don't know.
344. Were you present at that meeting?
Ans. I was.
345. Why did Philo B. Miles resign if you know?

Objected to same grounds.

A. I don't know.
346. State whether or not his resignation was presented in writing or orally?

Objected to same grounds.

A. My recollection is it was in writing.
347. To whom was that communication addressed if you remember?

Objected to same grounds and also as not the best evidence.

A. I don't remember who it was addressed to.
348. Into whose custody was the paper committed after its receipt?

Objected to as immaterial.

A. I don't really remember.

349. State whether or not you ever saw the communication to which you have referred?

Objected to as immaterial.

A. I think I have.

350. State whether or not as secretary of complainant company that is part of the files and papers of the company in your custody at the present time?

Objected to as immaterial.

A. It is probably with the papers and files.

351. Will you obtain it and produce it in court if it is in your custody?

(Objected to as incompetent and immaterial)

A. Yes sir.

352. Were you present at the time Mr. Miles' resignation
927 was accepted by the board of directors if it was so accepted?

Objected to as incompetent and immaterial.

A. I was.

353. What discussion was there at that time with reference to his resignation, or the advisability of his retiring, or any other questions pertaining to that subject?

Objected to same grounds.

A. I don't remember what discussion took place.

354. Do you remember at this time what the foundation of his retirement was?

Objected to as immaterial.

A. I do not.

355. Have you any knowledge whatever concerning the source or reasons for his retirement?

(Objected to same grounds.)

A. I have not.

356. Up to that time were the board of directors of your company the same as at first election?

Objected to as immaterial.

A. I think it was.

357. Was he the first one to resign?

Objected to same grounds.

A. I think he was.

358. Did he ever personally give you any reason for retiring, or wishing to retire, from the management—I am speaking now of any matters outside of the communication to which you have referred?

Objected to as incompetent and immaterial.

A. I don't recollect of any.

359. How long have you known Philo B. Miles?

Objected to as immaterial.

A. I have known him for some years, I could not tell just how many.

928 360. What was his business at the time in question?

Objected to as immaterial.

A. Grain man at the board of trade.

361. He was at one time mayor of the city of Peoria was he not?

Objected to as immaterial.

A. Yes sir.

362. But was not during the time that these gas questions were pending?

(Objected to as immaterial.)

A. No, he was not mayor at that time.

363. Was the full board of directors present at the time Mr. Miles' resignation was accepted?

Objected to as immaterial and incompetent.

A. I think so.

364. When with reference to Mr. Miles' resignation did Mr. Bailey resign?

(Objected to same grounds.)

A. I think the same day.

365. Was Mr. Bailey present at the time of the original election of directors?

(Objected to as immaterial.)

A. I think he was.

366. Do you remember whether or not any conditions were attached to his election originally?

(Objected to same grounds.)

A. I don't know of any conditions.

367. The two resignations were accepted at the same time, were they?

(Objected to same grounds.)

A. That is my recollection of the matter.

368. Who were elected to fill the vacancies caused by those two resignations?

(Objected to same grounds.)

A. I think Lyman A. Walton of Chicago was one of the gentlemen and I think F. W. Little was the other.

369. What was Mr. Walton's business at that time if you know

Objected to as immaterial.

929 A. I think he was manager of the Equitable Trust Company of Chicago.

370. What relation existed in a business way or otherwise between Mr. Walton and John R. Walsh at that time?

Objected to as incompetent and immaterial.

A. I think Mr. Walsh was interested in the Equitable Trust Company of which Mr. Walton was manager.

371. Do you know whether or not Mr. Walton was then engaged in any other line of business?

Objected to as immaterial.

A. I do not.

372. Do you know at whose recommendation Mr. Walton was elected a director?

Ans. I do not.

373. In what way did Mr. Walton's name get before the meeting at the time of his election, if you know?

Objected to as immaterial.

A. I don't remember.

374. State whether or not you as secretary of your company received any communication from any person pertaining to the proposed election of Mr. Walton as a director of your company?

Objected to as immaterial and incompetent.

A. I don't know whether I did or not.

375. When for the first time did you meet Mr. Walton and under what circumstances?

(Objected to as immaterial.)

A. I first met him I think at Chicago; I don't remember the circumstances.

376. How long prior to his becoming a director in your company did you meet him?

(Objected to as immaterial.)

A. I could not state.

377. State whether or not within your knowledge Mr. Walton was an experienced gas man or otherwise?

(Objected to as immaterial.)

A. I don't know.

930 378. Do you know from any information which you have since received whether or not he was at that time an experienced gas man?

Objected to as immaterial.

A. Yes, I think he knew something about the gas business.

379. State in what manner Mr. Bailey's resignation was presented to your company—whether in writing or orally?

Objected to as immaterial.

A. My recollection is it was in writing.

380. State whether or not that communication is now in your possession as secretary of the company?

Objected to as immaterial.

A. I don't know whether it is or not.

381. Will you look and if you find it produce it in court?

A. I will.

382. In what line or lines of business has Mr. Bailey been engaged during the past years?

Objected to as incompetent and immaterial.

A. O. J. Bailey has been engaged in the banking business, real estate business, money loaning business and cattle business.

383. Do you know what official connection at that time he had with any Peoria bank?

Objected to as immaterial.

A. He is connected with the Dime savings bank and also with the Central national bank.

384. What official positions did he hold in each of those banks, if you know?

(Objected to as immaterial.)

A. He was president or vice president of both.—no I think Mr. Callender was president of the Dime savings bank.

385. Were the resignations, to which you have referred, the only ones which took place in your directory during the first year of the company's business?

Objected to as immaterial and incompetent.

931 A. I could not state.

386. Have there been other resignations than those to which you have referred at any time since the organization of the company?

Objected to as immaterial, incompetent and not the best evidence.

A. Yes sir, I think Geo. H. Littlewood resigned.

387. When?

Ans. I don't remember the date.

388. Do you know under what circumstances Mr. Littlewood resigned as a director?

Objected to as immaterial and incompetent.

A. I do not.

389. Were you present at the time the resignation was accepted?

Objected to as immaterial.

A. I don't remember.

390. Who was elected to fill the vacancy occasioned by his resignation?

(Objected to as immaterial.)

A. I don't know.

391. In what manner were all of those three vacancies filled, if you know?

(Objected to as incompetent, immaterial and not the best evidence.)

A. My recollection is they were elected by a vote of the directors present.

392. State whether or not the records of your company show the causes for those resignations and the manner in which the vacancies were filled and the persons filling them?

Objected to as incompetent, immaterial and not the best evidence.

The MASTER: I think that a good objection, Mr. Tichenor.

393. Are you willing to produce in court the records of the company as kept by you as secretary if hereafter called for by counsel for the defendant?

Mr. IRWIN: Complainant objects to the question on the same grounds as before stated and I instruct the witness that in my judgment he has no right to produce those records unless authorized by the board of directors.

932

A. I will not produce the records until I have authority to do so from the board of directors.

394. You have already stated, have you not, that the record book in question is in your custody as secretary?

A. In the vault of the company.

395. And that it always has been in your custody and it is properly in your custody as such secretary, is it not?

Objected to as calling for the conclusion of the witness and a question of law.

A. Yes sir.

396. Will you when this hearing next convenes state positively whether or not you will produce the records to which I have referred?

Objected to as incompetent and immaterial and because the witness has no right to produce the record without authority from the directors.

A. You want me to say whether or not I will then say whether I will produce it or not.

397. Yes sir.

A. I will.

398. State whether or not during the time covered by your incumbency of the office of secretary of complainant company the various questions and matters coming before the board, and the discussion and ultimate disposition of them, have been made a matter of record in your minute book?

Objected to as incompetent, immaterial, irrelevant and not the best evidence.

933 The MASTER: I think that is competent; the witness may answer the question without attempting to give the contents of the book.

A. Minutes were kept of the business that was transacted.

399. Under whose direction and supervision have those minutes been written into the record, so far as they have been written by you personally?

Objected to as immateria-

A. Miss Pulsipher has written them in from memoranda I hav made and I have not always been present when she has written them and I don't know whether she had any instructions from anyone else or not.

400. She is the only one that has had anything to do with that work except yourself?

Ans. So far as I remember.

401. And within your knowledge she has received no instructions or directions in that regard except from you?

Ans. No sir.

402. Do the changes in the directory, as testified to by you, cover all that have been made since its organization.

Objected to as incompetent and immaterial.

A. All I think of.

403. Since the election of Mr. Walton as a member of the board how frequently has he attended its meetings?

Objected to as immaterial.

A. He has been present at some of the meetings; I don't remember how many.

404. Since the organization of the company how many meetings of the board of directors has John R. Walsh attended so far as your knowledge extends.

Objected to as incompetent and immaterial.

A. I don't recollect.

405. State whether or not he has attended any of them?

Objected to same grounds.

A. I don't know whether he has or not.

934 406. State whether or not if he has attended any of the board meetings the records will so show?

Objected to as incompetent, immaterial, irrelevant and not the best evidence.

The MASTER: I don't think it competent to prove that fact by oral testimony. In other words, I don't think it competent to prove any written fact by oral testimony, still I have not power to exclude the evidence if you want it in.

Mr. TICHENOR: I will withdraw the question, reserving the right to recall Mr. Miller on that point in the event the record does not disclose his presence at any of those meetings.

407. You testified yesterday that in your judgment the inauguration of a competing gas company in Peoria would be a good thing for all concerned, explaining, as I remember your testimony, that you meant the parties interested directly in the company and also the people in Peoria generally—in what way would that benefit or advantage come to the people generally in your judgment?

Objected to as incompetent and immaterial.

A. Well, they would have an opportunity of buying gas from other people besides the old company which had been having its own way here for 40 years.

408. State whether or not at that time and previously the capacity of the old company's works was sufficient for the demand in the territory reached by it so far as your knowledge extends?

Objected to as incompetent, immaterial and irrelevant.

A. Well, I think its capacity was great enough to supply the demand.

409. The old company was then furnishing gas for fuel purposes as well as for illumination, and had been for a number of years?

Objected to same grounds.

A. Yes, sir.

935 410. Will you state accurately and definitely in just what the advantages and benefits in your judgment to accrue to the people in this locality generally, consisted, by the inauguration of a competing gas company here—give the items and details as accurately and definitely as you are able to do so as they then existed in your judgment?

Objected to same grounds and also because it has already been asked and answered.

A. Well, where there is more than one party engaged in a business it is better for a customer as it gives him a chance to buy his goods where it suits him the best or gets them the cheapest whereby if he is compelled to trade with one merchant all together, he is at

the mercy, to a certain extent, of that man's ideas of doing business; he is also apt to receive more polite treatment and I think sometimes better prices if there is competition.

411. State if it is not true that at that time it was your judgment, that the only benefit to be derived by gas consumers in Peoria from competition would come in the reduction of prices then charged in this territory and was not that the only possible benefit that could accrue to them?

Objected to same grounds.

The MASTER: I think that is substantially calling for the same answer he has already given but the witness may answer if you desire.

A. No.

412. What were the others?

(Objected to same grounds)

The MASTER: If he can give any others in addition to those already given, he may answer.

A. Well, putting in free service pipes from the main to the houses and making no charge for setting meters and collecting no meter rents from the customers; those were all benefits to the consumer.

936

413. State whether or not the old gas company at the time of the organization of complainant company was making any charge for meter rents?

(Objected to same grounds.)

A. I don't know that they were making any charge for meter rent but they were charging for setting meters.

414. How many years within your knowledge had it been since that company had made any charge for meter rent?

Objected to as immaterial, incompetent and irrelevant.

A. I don't know.

415. State what if any advantage would accrue to any given customer by having service pipes from the mains of two different companies into his premises, or by having two different companies operating in the same territory, if there were any other than already explained by you?

(Objected to same grounds.)

A. Well, the matter of polite treatment of customers; frequently parties made complaints to the old company about their gas bills and they were told if they did not like it they could take out their meters and such as that.

416. Are you telling that of your own knowledge?

A. I am telling what I have been told.

Mr. TICHENOR: Then I move to exclude that answer from the records.

The MASTER: The answer may stand.

417. In what instance do you personally know of complaints of that character in the last 10 years?

Objected to as incompetent and immaterial.

A. I have had no trouble with them.

418. How many miles of streets to your knowledge over which your company proposed to operate had been paved prior to
937 the time you began to procure frontage as preliminary to making your application for a license to use the streets?

A. I should say about 5 miles.

419. How many miles of paved streets were there in the city of Peoria at that time, if you know?

Objected to as incompetent, immaterial.

A. I don't know exactly how many miles had been paved.

420. So far as your knowledge extends, how many were there?

Objected to same grounds.

A. I should say possibly 40 miles.

421. State whether or not the portions of the city where streets were paved were densely populated or filled with business interests at the time you began to procure frontage for obtaining your license to use the streets?

Objected to as incompetent and immaterial.

A. Reasonably so.

422. How did the density of population and business interests then along the lines of paved streets compare with the density in those portions of the town where the streets were not paved?

Objected to as incompetent, immaterial and irrelevant.

A. There was more business houses and more residence on the paved streets than there were out in the outskirts.

423. At the time you were procuring frontage to be used in connection with procuring a license to use the streets what objections, if any, did you meet with reference to damages to paved streets, inconvenience from having them opened etc., for the purpose of construction—I am asking for your personal knowledge?

Objected to as incompetent, immaterial and irrelevant, especially in view of the testimony of the witness that the actual work of procuring such frontage was done by others and must therefore, necessarily rest on hearsay.

938 A. I remember once — case where a Mr. Merckle on Bridge St., objected to signing his frontage on account of the damage

it might do the pavement; he came to see me personally about it and I assured him we would replace the pavement in as good condition as it was possible to do; that satisfied him and he signed his frontage.

424. What, if any, advantages did you assure Mr. Merckle would accrue to him by having a competing company in the gas business here?

Objected to as incompetent, immaterial and irrelevant.

A. I think I told him if we could get sufficient frontage and get a fair ordinance we would build a works and it would not be like the other people who had been around to see them and trying to get a franchise to sell out, that we meant business and would build a works here.

425. Anything further?

Ans. I don't recall anything more.

426. Is that the only person with whom you had a conversation on that subject so far as you can now recall?

A. No, there were others.

427. State whether or not you held out to any of those prospective customers any advantages to be gained by way of compensation for damages to streets and inconvenience during the time of construction, or anything else from having competition?

Objected to as incompetent, immaterial and irrelevant.

A. I did not promise them any compensation; I, in some cases, told them of Mr. Coffey's threat that if we built he would put the price of gas to fifty cents a thousand, but we were going ahead and build anyway.

428. What, if any, changes in your plans were made consequent upon the threat made by the old gas company to reduce the price of gas to 50c. per thousand feet?

(Objected to same grounds.)

A. Well, in the first place it did not make any difference, but when we came to sell gas we had to sell it for less money in order to get business.

939 429. State whether or not at any time since your company began to deliver gas it has had more than one price for illuminating gas and one price for fuel gas at the same time?

Objected to same grounds as before.

A. Yes, we charged more for illuminating gas than we did for fuel gas.

430. You don't understand me. Have you at any time since you have been furnishing gas, charged to consumers of illuminating gas different prices—I mean at one and the same time?

Objected to same grounds.

A. No.

431. How has it been with reference to fuel gas?

Objected to same grounds.

A. Not that I know of.

432. In other words then, at any one time your prices have been uniform over the whole territory covered by your company?

Objected to same grounds.

A. I think so.

433. What was the price charged for illuminating gas and what for fuel gas when your company first began service? That is, when you were ready to deliver gas and sell it?

Objected to same grounds.

A. My recollection is we charged 40c. per thousand with a discount of 10c. per thousand for prompt payment by the 10th, of the month for both illuminating and fuel gas.

434. Who fixed those prices?

(Objected to same grounds.)

A. I think, Mr. Little.

435. What, if anything, had the board of directors to do with the fixing of those prices?

(Objected to same grounds.)

A. I don't think the board had anything to do with it; I think perhaps Mr. Little talked with some of us.

940 436. State whether or not you, as a member of the board of directors, knew what price was fixed at that time?

Objected to same grounds.

A. I knew it.

437. Do you know whether or not the other members of the board also knew it?

(Objected to same grounds.)

A. I do not.

438. State whether or not the question of charging 40c. for gas, as you have stated, was considered in the board of directors at any time about the time you began to serve gas to consumers?

Objected to same grounds.

A. I don't remember.

439. For how long a period of time did your company continue to furnish gas at the rate which you have stated?

Objected to same grounds.

A. I think from April 1900 until September 1900.

440. State whether or not during that period you were operating

in the same territory covered by the Peoria Gas Light & Coke Co., by its service?

(Objected to same grounds.)

A. I think we were in some places and in some places I think we were in new territory.

441. Who of your company, if you know, made the change in price in September 1900, as you have stated?

(Objected to same grounds.)

A. I don't know.

442. When, with respect to the time that new price went into effect, did you learn of it and in what way?

Objected to same grounds.

A. My recollection is I learned it from Mr. Little.

442. What, if any, discussion of the proposed change had taken place in the board of directors?

(Objected to same grounds.)

A. As I now remember it the talk was we were doing busi-
941 ness at a loss by selling gas—Interrupted——

Mr. RITCHER: I object; if this discussion took place in a meeting of the board of directors it is not the best evidence.

The MASTER: If it is in the minutes it would not be.

The WITNESS: I am not certain this occurred at a meeting of the board of directors.

443. (Int. 442 repeated to the witness.)

A. I don't know of any discussion on that subject taking place in the board of directors.

444. State whether or not the subject was mentioned in any way at any meeting of the board of directors?

(Objected to same grounds.)

A. I don't remember whether it was or not.

445. Who, if anyone, from the time of the organization of the company up to the month of October, 1900, had authority to make prices to be charged for gas?

(Objected to as incompetent and immaterial.)

A. I should say Mr. F. W. Little.

446. Do you know from what source that authority originated? In other words, do you know the primary source for the authority of fixing the price of gas?

A. Well, Mr. Little was manager of the company—Interrupted——

The MASTER: No, answer the question yes or no?

The WITNESS: Yes.

447. Where was it?

(Objected to same grounds as before.)

A. Why, Mr. Little was governed in his actions by consultation with the larger stockholders and the directors who were interested in the affairs of the company.

448. What change was made in the prices at the time you have mentioned in September 1900?

(Objected to same grounds.)

A. I am not positive whether it was in September or October, but my recollection is the net price of illuminating gas was placed at $1.15, and the net price of fuel gas at 75c.

942 449. What were the gross prices of each?

Objected to same grounds.

A. I don't know.

450. Did you personally sign the paper offered in evidence in this case marked Exhibit "19"?

Ans. I did.

451. At about the time it bears date?

Ans. I think so.

452. When you signed that paper did you know the prices charged by the Peoria Gas Light & Coke Co., at that time for fuel and illuminating gas?

(Objected to as incompetent and immaterial.)

A. I did.

453. What were those prices?

(Objected to same grounds.)

A. They had reduced the price of illuminating gas from $1.25 net to $1.00 a short time before that communication was made to the city council—a few weeks before possibly; fuel gas had been 75c. net and they raised it to $1.00.

454. So that, at the time Exhibit "19" was prepared and signed the price of illuminating gas and the price of fuel gas were each $1.00 net?

(Objected to same grounds.)

A. That is my recollection.

455. At that time you were using both fuel and illuminating gas were you not?

Ans. I personally was not—simply illuminating.

456. What were the prices charged by the Peoria Gas Light & Coke Co., from the time your company began to serve gas up to the time it made the change, to which you referred in your testimony a short time ago?

(Objected to as incompetent and immaterial)

A. My recollection is when we got ready to do business they re-

duced the price of gas to 50c. and kept it there for some months and in some cases made even a lower price than that.

457. Do you remember at this time, of your own knowledge, the lowest price made by the old company at any time up to the date of your change in price?

943 A. I am not positive, but I think they were as low as 30c.

458. During that time from which company were you taking gas?

A. I took gas from the old company part of the time, but as soon as I could get our own gas I quit taking from the old company.

459. Do you remember now about when you began taking from the new company?

(Objected to as immaterial.)

A. In May 1900.

460. At that time the price was as you have stated?

Objected to as incompetent and immaterial.

A. That is my recollection of it.

461. Is it not true that there was a change in price charged by your company between April 1900 and September or October 1900?

Objected to as incompetent, immaterial and irrelevant.

A. Not that I remember of.

462. In the statement made by you with reference to prices charged by the old company during the period from April to September or October 1900, did you intend to include both illuminating and fuel gas—in other words, were they the same price?

Objected to same grounds as before.

A. I think they were.

463. And that was true of your company too?

Objected to same grounds.

A. I think so.

464. Up to what time did the price which you have named as charged by the old company remain at 30c.?

Objected to same grounds and also as assuming the general price was 30c. and assuming the witness knows.

A. 5 or 6 months.

465. Do your know of your own knowledge what change the old company made in the prices when such a change was made?

Objected to as incompetent, immaterial and irrelevant.

944 A. I know they increased the price but just what they fixed it I don't remember, but it was increased from what they had been charging.

466. Do you remember at what point the prices were placed?

Objected to same grounds.

A. No, I do not exactly, but my recollection is they raised the price to above a dollar on illuminating gas.

467. Is it your recollection they made the price of illuminating gas the same as your company did?

Objected to same grounds.

A. I believe it was about the same.

468. What was their increased price for fuel gas if you remember?

Objected to same grounds.

A. My recollection is they placed that at 75c.

469. How long did your company continue to furnish gas at the prices which you have mentioned after the increase to which you have referred?

(Objected to same grounds.)

A. My recollection is they continued furnishing gas at those prices until the court decided they could not charge two prices.

470. What court was it and in what case?

Objected to same grounds.

A. It was in a case brought by The Peoria Journal Co., *vs.* The Peoria Gas Light & Coke Co., in the circuit court of Peoria Co., and the result affected us also.

471. Do I understand from your testimony that up to the time of the decision in that case that your net price had been 75c. for fuel gas and $1.15 for illuminating gas?

Objected to same grounds.

A. Yes sir;

472. What change did you make at that time after that decision?

Objected to same grounds

945 A. I think then we changed the price to one dollar for both illuminating and fuel gas.

473. To refresh your recollection I will ask you if the net price for illuminating gas had not then for some time been a dollar instead of $1.15, as you say by your company?

A. My recollection is we charged $1.15 for illuminating gas and when we made the change we made it $1.00 net for illuminating and fuel gas.

474. When, with reference to your placing the net price of gas at 75c. and $1.15 as you have testified, was done in September or October 1900, did the Peoria Gas Light & Coke Co., fix the same price you have mentioned?

(Objected to same grounds and because already answered.)

The MASTER: I think it has already been gone over; I think he has answered that question and said it was about the same time.
Mr. TICHENOR: Did you so answer?
The WITNESS: I did.

475. Do you know whether or not the Peoria Gas Light & Coke Co. after the decision to which you have referred changed its price and if so, where they were placed?

Objected to as incompetent and immaterial.

A. Yes sir; they changed their price also.

Mr. RITCHER: Do you know that? It is not a fact?
The MASTER: The question asked for his knowledge.
The WITNESS: I think they did.
Mr. RITCHER: What do you say you know for when you don't know. They changed a year before that and have not changed it since. You are conducting a hearsay examination here, Mr. Tichenor, when you ought to know the facts as well as we do.
Mr. TICHENOR: If I need any of your assistance I am not too bashful to ask for it. I am conducting this examination and I will conduct it in my own way until the master instructs otherwise.

946 476. Did you know of the presentation to the city council of the ordinance for a license to your company to occupy the streets, alleys etc., of Peoria for the purpose of construction?
Ans. Yes sir.
477. What, if anything, did you have to do with its preparation?

Objected to as incompetent and immaterial.

A. I had nothing to do with the preparation of it.
478. Who of your company, so far as you know, participated in the preparation of that ordinance?

Objected to as incompetent and immaterial.

A. Mr. F. W. Little.
479. Is he the only one within your knowledge?

Objected to same grounds.

A. Possibly Sumner R. Clarke.
480. At the time you signed Exhibit "19" did you know that the ordinance had been presented?
Ans. Yes sir.
481. Do you at this time remember how long it had been pending when Exhibit "19" was prepared and signed?

(Objected to as immaterial.)

A. Yes sir.
482. What is your recollection of that at this time?

Objected to as immaterial.

A. It had been presented to the council two weeks before the signing of that paper.

483. What, if anything, did you have to do with the passage of that ordinance?

(Objected to as incompetent, immaterial and irrelevant.)

A. I talked with Ellis Powell about it; I did all I could with different aldermen.

484. State whether or not during the pendency of that ordinance you saw all of the members of the city council at that time with reference to its passage?

Objected to as incompetent, immaterial and irrelevant.

A. I think I saw most of them.

947 485. Are you able to state at this time how many times you saw the different members of the council on that question?

Ans. No.

486. Was it frequently or only a few times?

Objected to as immaterial.

A. Not very frequently.

487. State whether or not during the time of the pendency of that ordinance you were on any occasion before the committee to which the ordinance had been by the council referred?

Objected to as immaterial.

A. I think I was.

488. Do you remember at this time who composed that committee?

Objected to as immaterial and not the best evidence.

A. I remember going over to the city hall with Mr. Irwin and talking to Mr. Powell and Mr. Gorman who did not see it as we wanted them to.

489. Were they the only ones who were opposed to the ordinance?

A. They were all I remember.

490. Do I understand you to say all the others were in favor of it from the beginning?

A. They seemed to be very favorable to it.

491. State whether or not at the time or times you met the committee you found opposition there against the ordinance?

Objected to as incompetent and immaterial.

A. I do not really know that the two gentlemen I have mentioned were on the committee; they were the only objectors I remember of.

492. I will ask you if Mr. Kellerstrauss was a member of that committee?

A. Possibly he was, but he was in favor of this matter.

493. Was not Mr. Wolschlag also a member of that committee?

A. I don't know.

494. Do you remember whether Mr. Powell was a member
948 of that committee?

Ans. No I do not.

495. From the introduction of the ordinance in question were there any objectors, or any who were antagonistic to it, other than Mr. Powell and Mr. Gorman to whom you have referred?

Objected to as incompetent and immaterial.

A. There may have been, but those are the only two I recollect of.

496. Of how many members did the council consist at that time?

A. 14 I think.

497. If you had any special reason for calling on Mr. Gorman and Mr. Powell at the time you have referred to tell what they were.

(Objected to same grounds.)

A. As I remember it, Mr. Powell was not quite satisfied with the kind of an ordinance we wanted; he had some objections but just what they were I do not now recollect.

498. State whether or not Mr. Powell expressed himself as being disinclined to grant another franchise to any company, if so, state what he said.

Objected to as immaterial, incompetent and irrelevant.

A. My recollection is, Mr. Powell objected to an ordinance being granted without a price fixed at which the gas should be sold.

499. Did he make any other objection to the ordinance?

Objected to as incompetent and immaterial.

A. He may have done so; Ellis was quite a stickler when he was over there—pretty particular.

500. What, if anything, did he say with reference to the damage that would necessarily be caused to the streets by the construction of a new gas plant in Peoria?

Objected to as incompetent and immaterial.

949 The MASTER: I do not see how that inquiry becomes material; damage to the streets is a thing an individual is not concerned in and I am at a loss to know how that inquiry is material in this case.

Mr. TICHENOR: I will withdraw the question.

501. What, if anything, did he say by way of objection concerning the matter of tearing up the streets and possible damage, inconvenience and the like to the citizens and others having occasion to use them?

Objected to as incompetent and immaterial.

The MASTER: I do not see the materiality of it but the witness may answer subject to the objection.

A. I do not really remember what he did say on that subject.

502. What, if any, representations did you make to him with reference to any objections which he made to the proposed ordinance?

Objected to as incompetent and immaterial.

A. I do not remember; I know he wanted a clause in there fixing the price and I believe he objected to the length of time we wanted but I am not positive on that point.

503. Do you refer to the length of time before preparing to distribute?

A. No, I mean the length of the license we wanted.

504. Were Mr. Powell and Mr. Gorman the only ones, to your recollection, that objected?

A. They were the only ones that I remember of; I know they objected and laid it over for two weeks.

505. Did any other gentlemen interested in the proposed new company call on the members of the council, or the committee, with you with reference to this matter?

Objected to as incompetent and immaterial.

A. Yes, I think Ben Warren, Jr., and I talked to Alderman
959 Thede.

506. What was the subject of that conversation?

Objected to same grounds.

A. On the same line, that we wanted a fair ordinance and wanted to have as good a show to do business as the old company had—we did not want any restrictions.

507. Did you see Mr. Thede more than once?

Objected to same grounds.

A. Yes, I think I did.

508. On how many occasions during the pendency of that ordinance did you confer with any members of the council other than Mr. Powell and Mr. Gorman with regard to it?

Objected to same grounds.

A. I don't remember.

509. Were they a number of times or only a few?

Objected to same grounds.

A. Well, I talked to different members of the council at different times; I could not tell how many times or how often.

510. How many times were you before the committee having this ordinance in charge?

(Objected to same grounds.)

A. I don't believe more than once.

511. State whether or not you talked with the members of that committee, or any of them, other than on the occasion when you went before the committee as a body?

(Objected to same grounds.)

A. Probably I did.

512. What discussion was there between you and the members of this committee at the time you met it as stated with reference to this particular ordinance?

Objected to as incompetent and immaterial.

A. I am not positive but my recollection is, any objection any of them made was on the length of time for which we wanted
951 the franchise and they wanted us to cut it down and we told them we could not do it, that we wanted to be on the same footing as the old company, that they had a perpetual franchise and we wanted as long a one as we could get; that was the only objection I think of.

513. Were those the objections principally made by Mr. P-well and Mr. Gorman?

(Objected to same grounds.)

A. No, sir, Mr. Powell, as I stated, wanted to have the price fixed I think at 75 cents and Mr. Gorman was for a delay; he was in the employ of the old company and of course I did not figure he would be very friendly to us.

514. How many conversations, if any, more than the one to which you have referred, did you have with Mr. Gorman upon that question?

(Objected to as incompetent and immaterial.)

A. I could not tell.

515. Were there a number?

A. Possibly I met him nearly every day.

516. You were members of the same club, were you not, and met there almost every day at that time?

A. No, I don't know as he was a member of any club I belonged to.

517. Were you present in the council at the time the ordinance was passed?

Ans. Yes, sir.

518. How many meetings of the council did you attend during its pendency?

(Objected to as incompetent and immaterial.)

A. Two.

519. Were those the only ones held during that period?

Objected to same grounds.

A. I think they were.

520. Have you now stated substantially all you had to do in the council, or its committees, connected with the passage of the
952 ordinance in question?

(Objected to as incompetent and immaterial.)

A. No, I left a copy of the Peoria Journal on the desk of each alderman and the unanimous consent of the property owners and a request that a franchise be granted to our company.

521. What do you mean when you refer to the unanimous consent of the property owners?

A. That was the heading of the article in the paper.

522. At the time of the completion of the organization of your company did you or did you not know the price at which gas could be manufactured and delivered to consumers in Peoria?

Objected to as immaterial and incompetent.

A. I did not.

523. What, if any effort, had you made to inform yourself upon that question?

(Objected to same grounds.)

A. I had not made any.

524. At the time you made your stock subscription was it with the intention of taking and paying for the stock so subscribed?

Objected to same grounds.

A. I expected to get some stock, yes sir.

525. State whether or not you know Charles V. Newman who formerly was employed by the Peoria Gas Light & Coke Co.?

A. I do.

526. Was he at one time an employé of your company?

Ans. Yes.

527. What was his duty and what did he do?

A. I think his principal duty was selling gas stoves while with our company.

528. When, with reference to its organization, did he become associated with your company?

A. My recollection is, he came with us after we got to selling gas.

529. To refresh your recollection I will ask you if you do
953 not remember of his being with your company at the time you attempted to procure frontage or shortly afterwards?

Ans. No, he was not.

530. Will your records show when he became an employé of the company?

Ans. I should judge the books would show.

531. Will you examine them and report later as to the time he became an employé?

Ans. Yes sir.

532. I understood you to state that your recollection was that his principal business with your company was in handling gas stoves. Do you remember at this time any other duties he performed for your company?

A. Yes, I think he solicited gas customers.

533. For how long a period of time?

Ans. That I don't know.

534. Do you know what previous experience Mr. Newman had had as a gas man?

(Objected to as immaterial and irrelevant.)

A. Yes, I have heard him tell about having been with other companies in St. Louis and I knew he had been with the Peoria Gas Light & Coke Co. in this city.

Complainant objects to the foregoing answer as hearsay and not responsive and moves the court to exclude it.

535. Within your knowledge acquired from contact with Mr. Newman, was he a man of some skill and experience in the gas industry?

(Objected to as immaterial and irrelevant.)

A. He was a good deal of a wind bag.

536. Not a gas bag—I wish you would answer my question. (Last question repeated.)

Ans. I don't know.

537. When did his connection with your company cease?

A. When he was discharged; I don't remember the date but it was shortly before he commenced getting up an opposition company.

538. Will your books or files show when he was discharged?

A. I think they will.

539. Will you ascertain that fact and report it later on if
954 called for?

Ans. Yes sir.

540. State whether or not, during the entire time covered by his connection with your company, his duties remained of the character you have described?

A. I think they were the same duties all the time.

541. What, if anything, did you have to do with instructing him concerning his duty?

Ans. Nothing whatever.

542. Were you present or did you participate in the preparation of instructions for him concerning his duty with your company?

Objected to as immaterial and irrelevant.

A. I did not.

543. Do you know under what circumstances he became associated with your company in the first instance, if so, what were they?

Objected — as incompetent, immaterial and irrelevant.

A. Yes sir, he wanted to give us a lot of inside information about the gas business in Peoria.

544. When was that with reference to the time he entered your employment?

(Objected to as immaterial.)

A. It was prior to the time; I don't remember how long it was before.

545. Was the question of taking him into your company under consideration by the board of directors, or by the management, for any considerable length of time before he was actually taken?

Objected to as immaterial.

A. I don't believe the directors ever considered the matter.

546. By whom was he employed, if you know?

A. By the manager, F. W. Little.

547. State whether or not you were consulted with respect to his proposed employment?

(Objected to as immaterial.)

A. Not consulted, but I think Mr. Little mentioned it to me.

548. State whether or not Mr. Little gave any reason or
955 reasons for employing him.

(Objected to same grounds.)

A. I don't know unless he said he thought it was a good thing to take him on.

549. Do you remember at this time any reason he gave why he thought it would be desirable to associate him with your company?

Objected to as incompetent and immaterial.

A. No, not unless it was he thought he might get some information from him.

550. Since the time of his discharge, as you have mentioned, has he been in your employ?

Ans. No sir.

551. Have you since that time seen him or had any conversation or correspondence with him with regard to the affairs of the company?

(Objected to as immaterial.)

A. No.

552. How frequently have you seen him since that time with reference to the affairs of your company?

Objected to as immaterial and irrelevant.

A. I saw him I think along last June when this tax review matter was on.

553. What were the questions pending between you and him at that time, if any?

(Objected to same grounds.)

A. No questions at all; he simply wanted to pull our leg.

554. Had Mr. Newman at that time anything whatever to do with the board of review?

(Objected to same grounds.)

A. He was not a member of it.

555. How long is it since you have seen Mr. Newman at all?

A. I do not think I have seen him since last June.

556. What, if anything, had you to do, by way of suggestion or otherwise, concerning the preparation of "Exhibit 19"?

Objected to as immaterial.

A. I think I talked with Mr. Little about it.

956 557. Do you know with whom the ideas or matters embodied in that exhibit originated.

Objected to as incompetent, immaterial and irrelevant.

A. No, not entirely.

558. Do you at all, if so, where?

(Objected to same grounds.)

A. I think I had something to do with it; the old company were trying to make capital out of having reduced the price and were trying to make the people think that if they would stick to them they would get cheaper gas and trying to keep us from getting a franchise and I think I suggested to Mr. Little it would be a good idea to put a communication into the council.

559. Was there any reason, other than the one to which you have referred, that induced you to participate in the preparation and presentation, if you did, of the paper in question?

Objected to as incompetent and immaterial.

A. I don't think of any other reason.

560. Who, if you know, presented "Exhibit 19" to the different people whose signatures it bears to have them sign it?

Objected to as immaterial.

A. I don't remember distinctly but possibly Mr. Clarke and myself, or both of us.

561. State whether prior to the presentation of that paper to the city council, or shortly after, any of the other gentlemen, whose names are affixed to it, expressed to you any opinion regarding its advisability and the purpose to be accomplished by it?

Objected to as incompetent and immaterial.

A. I don't recollect of any.

562. How long was it pending before it was finally completed and delivered to the council, if you know?

(Objected to same ground.)

A. My recollection is it was simply a day or two.

957 563. State whether or not at the time you signed the paper you believed the matters contained in it were true?

Objected to as incompetent and immaterial.

A. I certainly did.

564. State whether or not at the time you signed it you believed that your company would carry out in good faith the statements made in that paper?

(Objected to as incompetent and immaterial.)

A. I did.

565. State whether or not you then believed that the company would be able to carry out the representations made in that paper?

Objected to same grounds.

A. I did.

566. State whether or not your belief upon those questions remained the same all the time up to the passage of the ordinance granting your company a license to use the streets, etc.

Objected to same grounds.

A. I did.

567. Who presented the paper to the clerk or city council, if you know?

(Objected to as immaterial.)

A. I do not remember who delivered it to the city clerk but it was delivered to him.

568. Who, if anyone, had the paper in charge up to the time it was delivered?

(Objected to as immaterial.)

A. I should say Mr. Irwin, Mr. Clarke or myself.

569. Whose ideas were those embodied in "Exhibit 19"?

Objected to as immaterial and already answered.

A. I think the matter was gone over between Mr. Little, Mr. Clarke and myself.

Mr. TICHENOR: I have now gone as far with the witness as I can in the absence of Mr. Mansfield. There are some questions that I desire to discuss with Mr. Mansfield before going further with

958 the witness and I desire to have the right to recall him and examine him further if there is anything I have forgotten.

The MASTER: You can have the privilege of doing so.

Cross interrogatories by Mr. IRWIN:

1. In your direct examination you stated something about the prices charged for gas by the Peoria Gas Light & Coke Co. I will ask you if all your information with reference to the prices charged for gas at the several times you have testified about, to consumers by the Peoria Gas Light & Coke Co. was not such information as you gathered from rumors and newspaper information?

A. Yes sir, and talk that I heard.

2. Talk with whom?

Ans. I don't remember.

3. Was it talk with any of the officers of that company?

A. No.

4. Was it talk with anybody that had authority to speak for that company?

Ans. Not that I recollect of.

5. Well, it was all hearsay talk you heard upon the street from people you met from time to time was it not? and newspaper reports?

Ans. Yes sir.

6. That is all the knowledge you had about it, was it not?

A. Yes.

7. You said you were one of the signers of "Exhibit 19" in evidence. I will ask you if you believed the representations set forth in "Exhibit 19" to be true at the time they were made?

A. I did.

8. Do you now believe those representations were true?

A. Yes sir.

9. You were asked about representations made to the signers of the petition to the city council by the property owners for the granting of an ordinance to the complainant company. I will
959 ask you if you made any representations at any time to any property owner when asked to sign his consent for frontage that you believed was not true?

Ans. I did not.

10. At the time you made the representations to any property owner to whom you talked with reference to getting his frontage consent, did you believe that the statements made by you at that time were true.

Ans. I certainly did.

11. Did you at any time make any representation to any property owner to obtain his frontage consent on an application for an ordinance from the city council with reference to the price that would be charged for gas by your company to consumers at any time?

A. I did not; the only talk about price that was ever brought up was a statement I made about Mr. Coffey's threat who stated to me that if we built a works he would put the price to 50 cents and keep it there for two years; I told Mr. Coffey if we could get a fair ordinance we would build a works anyhow in spite of his statement.

12. Did any of the canvassers for frontage consents, employed by you as you have testified, make any representations to any of the property owners in order to secure their frontage consents to the city council, as to the price to be charged for gas by the complainant company, by your instructions, or by your authority or approval at that time?

Ans. No.

13. Did you give any instructions to them as to any representations to be made with reference to the price to be charged for gas by the new company?

Ans. No.

Re-direct interrogatories by Mr. TICHENOR:

1. What, if any, representations or statements did you make to any such persons with whom you conversed concerning the threats on the part of the old company to reduce the price of gas to
960 50 cents as to your company's meeting that price in the event it should be done?

Objected to as incompetent, immaterial and not proper re-direct.

A. I think I may have said we would go on and build the works in spite of that statement and were going into the business; the fear of persons was we might not build but simply get a franchise and sell out; they were not bothered about the price; they wanted to know whether they were going to have another gas works.

2. Did you or did you not represent to them you would meet a 50 cent rate if made by the old company?

A. I probably told them we would give them a run for their money, yes, that is, that we would get a share of the business—expected to.

3. I understood you to say on cross-examination that you did not instruct the various persons soliciting frontage with reference to the price they might offer to prospective customers in the event you should succeed in establishing a plant here. State if it is not true you authorized them to say in making such solicitations that if a new company was organized it would result in the production and distribution of gas at lower prices than were then paid in Peoria and also that it would result in a saving to them in other ways with reference to gas service.

Objected to as incompetent and immaterial, not proper re-direct.

A. I don't think I instructed the canvassers; I know I did not instruct them to name any price at which we would furnish gas.

4. Did you or did you not in connection with that work done by them make to them severally, or to any of them, any representations with reference to the two parts of the previous question propounded to you, or with referenee to either of those features of the *u*estion?

(Objected to same grounds as before.)

A. I don't recollect that I told them anything different
961 from what I have stated here.

5. State if it is not true that you authorized those gentlemen, or some of them, to hold out as inducements to property owners in securing their consent to frontage that if a competing company were installed in Peoria it would result in a reduction in the price of gas to the citizens and consumers and also in a saving to them in other ways with reference to gas service.

Objected to as incompetent and immaterial and not proper redirect.

A. I think it is likely I told them it would be a benefit to them to have another company in the business in Peoria.

6. That hardly answers the question—I wish you would answer it more definitely if you are able to do so.

A. I don't think I am.

7. You understand the question thoroughly, do you?

A. Yes sir, I have had it read to me by the stenographer two or three times.

Re-cross interrogatories by Mr. ABBOTT:

1. Is it not a fact that the organization of a new company, the erection of its works and furnishing of gas by it to the inhabitants of the city of Peoria, did result to them in a saving in several ways?

Objected to as calling for a conclusion; the best evidence of that is what has been done.

The MASTER: I think that is true.

Mr. ABBOTT: The question may be open to that technical objection but it strikes me, in view of the character of the evidence given by the witness, a conclusion on a fact is certainly as good as a prophecy.

A. Yes sir.

2. What were some of those ways?

962 Objected to for the same reasons.

The MASTER: I don't think it competent, still the witness may answer subject to the objection.

A. Well, the electric lighting of the city of Peoria has been reduced something over $15,000 a year since our company got into business.

Mr. TICHENOR: The defendant objects to the answer as not responsive and pertains to something that has no connection with the gas question at all.

3. I am referring more particularly in my question to the saving to gas consumers if there were ways in which such saving resulted.

A. Well, there was a saving to gas consumers in this; before we

got into business here the consumers of gas were compelled to pay for the service pipe from the main to the residence and we didn't charge them anything for that, neither do we charge them for the setting of meters for which they used to pay $3.00 in some cases and $2.50 in others.

(The MASTER:)

4. My recollection is you stated that yesterday.
A. Yes sir, I did.

Adjourned by agreement until Tuesday, February 25, 1902, at 10:00 o'clock a. m.

963 On account of the illness of Mr. Henry Mansfield, city attorney, the special commissioner on Tuesday, February 25, 1902, adjourned the further hearing of the case without date, the hearing to be resumed at such time and place as should be designated by the special commissioner.

United States court room, Government building.

PEORIA, ILL., MONDAY, *March* 10, 1902—10 o'clock a. m.

Parties met pursuant to the call of the special commissioner.
Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin and Mr. W. T. Abbott, appearing for complainant. Mr. Henry Mansfield and Mr. F. H. Tichenor appearing for defendant.

GEORGE H. LITTLEWOOD, called on behalf of the defendant, being first duly sworn, deposes and says.

Direct interrogatories by Mr. TICHENOR:

1. State your name and place of residence?
A. George H. Littlewood; # 1226 Main St., Peoria, Illinois.
2. What is your business?
Ans. Cashier Merchants national bank
3. How long have you been such cashier?
Ans. 12 years any way
4. During all that time have you been a resident of Peoria?
A. Yes sir;
5. In what other line, or lines of business, if any, have you been engaged during any portion of that 12 years?
A. I am a member of the firm of Littlewood & Stimburg, bankers, of Farmington, Fulton county, Illinois.
6. Is that the only other business in which you have been engaged during any part of that time?
A. Yes sir; I don't know of any other special business and I don't give that business any attention; Mr. Stimburg is the manager there.

7. What was your business before coming to Peoria and
963½ what had it been for many years?

A. I started a bank in Farmington in 1868, and before that I was in the dry goods business.

8. Was that the same bank to which you have just referred?

A. Yes sir;

9. State under what circumstances you first became acquainted with the project to organize a rival gas company in the early portion of the year 1899?

(Objected to as immaterial.)

A. I don't know whether I can tell that—it is out of my recollection. I will have to ask if Mr. Little came here about that time?

10. That was the time?

Ans. I got acquainted with Mr. Little and some of the people who had that project and I had always felt a little as if I would like to get into something of the kind.

11. Are you able to state at this time in what manner the subject was brought to your attention and by whom?

A. I could not; I don't know.

12. For how long a period of time had you known any of the officers, or directors, of the Peoria Gas Light & Coke Co., which was then operating in Peoria territory?

A. I had known them simply by their being residents with me in the city and by paying my gas bills.

13. Who were the gentlemen connected with that company with whom you were acquainted in the manner you describe?

A. I was not much acquainted with them only I knew Mr. Gorman, Mr. Farrelly and the Coffey's—simply a speaking acquaintance with them; that was all; I was not intimately acquainted with any of them.

14. Do you know W. A. Herron of Peoria?

Ans. Yes, sir;

15. Do you know whether or not he was an officer of that company for years prior to the organization of the company in question?

963¾ A. I know he had stock, but I didn't know he had any official position there.

16. Do you know Mathew Henebery of Peoria, Ill.?

Ans. Yes sir;

17. How long have you known him?

A. I knew him perhaps before I came to Peoria as an officer of the First national bank.

18. What official connection had Mr. Henebery with the Peoria Gas Light and Coke Co.?

(Objected to as immaterial.)

A. I could not tell you; I don't know what position he had.

19. What other gentlemen, if any, did you know as being associated with that company?

A. At this time I don't know—the Farrelly's, Coffey's, Mr. Henebery and Mr. Gorman was a worker there, I don't know whether he had an official position or not; I think he had a clerical position.

20. Do you know Leslie Robison of Peoria?

Ans. Yes.

21. Did you know him as connected with that company?

Objected to as immaterial.

A. Now, that you mention his name, I did know he had some stock but I would not have thought of him if you had not mentioned his name.

22. State if Leslie Robison was not for many years president of the old gas company, as it is called,—were you not aware of that fact?

(Objected to as immaterial.)

A. I knew Mr. Robison had some connection with the gas company but if he were president he very likely was president before my time here.

23. Do you know what official connection with the company Mr. Henebery had?

(Objected to as immaterial.)

A. No sir.

24. What was the financial standing of all these gentlemen
964 whose names you have mentioned in this community?

A. Very good.

25. What was their general reputation as men of business as well as financially in Peoria?

(Objected to as immaterial.)

A. Very good.

26. During what portion of the time you have been a resident of Peoria were you a consumer of gas taken from the Peoria Gas Light and Coke Co.?

(Objected to as immaterial.)

A. I think from about 1889 that I personally paid for gas; Mr. Hillman and myself occupied a house together and we paid the gas together for a time, then on March 23, 1891, I was married and occupied Mrs. Howe's house on the corner of Fayette & Perry streets and then I commenced paying individually for the gas that was furnished me.

27. Have you continued to be a consumer of the old company up to the present time?

A. No sir, I am not now; I take gas from the Peoria Gas & Electric Co.

28. Since what time have you taken gas from that company?

A. Since perhaps two years ago; I could not give the date, but it has been since I have been on the bluff.

29. Ever since you commenced to take gas from the new company you have resided at your present place of residence?

Ans. Yes sir.

30. State if you were not at one time a tenant of Mathew Henebery?

A. Yes sir, that was when Mr. Hillman and myself occupied one of Mr. Henebery's houses.

31. In what line of business has Mr. Herron been engaged during the time you have known him in Peoria?

Objected to as immaterial.

A. President of the Peoria savings bank.

965 32. Is that an old or new institution and what is its standing in Peoria?

A. It is an old institution and its standing is the very best.

33. Do you know how long Mr. Herron has been connected with that bank in that capacity?

(Objected to as immaterial.)

A. Ever since I have known the institution or known of it he has been connected with it.

34. In a general way, for how long a period of time has that been?

A. Well, very likely from 1868; I commenced in the banking business then and I would be likely to have had a knowledge of him from that time and possibly a little before that.

35. What territory within your knowledge was covered by the service of the old company at the time of the commencement of the agitation towards the organization of the new company?

Objected to as immaterial.

A. I could not say; I know but little about it.

36. How many gas companies were then operating in Peoria?

Objected to as immaterial.

A. But one at the time of the organization of the new company.

37. Do you know how long that old company had been in existence in Peoria?

Ans. I do not.

38. Do you know whether or not it was then an old or new company?

A. I could not say as to that; at the time I first knew it it was the only gas company here; I don't know whether it would be called old or not; it was the first gas company in Peoria perhaps.

30. State whether or not within your knowledge at that time the old gas company was equipped for supplying the entire

966 city of Peoria and suburbs with gas and was so doing?

Objected to as immaterial.

A. I have no personal knowledge as to what ground they cove

40. State whether or not it was then a matter of common notor as to whether or not the old gas company's plant was sufficient furnish gas within the territory previously mentioned?

Objected to as incompetent and immaterial.

A. I don't know how far its service extended and so far as being competent to furnish gas I don't know anything about it a I don't know that I have ever heard they were or were not com tent to furnish it.

41. State under what circumstances you were approached wi reference to the proposed organization of the new gas company ear in the year 1899 or at any other time if earlier than that date?

Objected to as incompetent and immaterial and already answere

The MASTER: I think the question has been asked him befo but he may answer subject to the objection.

A. I could not say.

42. Have you at this time no recollection whatever as to th manner in which you became interested in the proposed organiza tion?

Objected to same grounds as before.

A. As to who spoke to me first about it, I could not say.

44. How long a period of time prior to the making up of the sub scription list of the capital stock in that company, did you know it was proposed to organize a new company?

A. I could not say the time but probably a short time—perhaps a month would cover it.

44. State whether or not you were solicited to become a stock holder or whether you yourself took the initiative in that regard?

Objected to as incompetent, immaterial and already asked
967 and answered.

A. I think it very likely that the solicitation might have come from my side; I could not recollect now; I don't remember just how it was, but in a conversation had with those that were in terested I rather think I said I would be glad to take some stock in the new company.

45. Who were those with whom you had any such conversation?

Objected to as incompetent and immaterial.

A. Mr. Sumner Clarke, Mr. Frank Corning, Mr. O. J. Bailey, Mr. Ben Warren, Jr., Mr. Theodore Miller and Mr. Fred Luthy.

46. With which of those gentlemen, if any, were you then asso ciated in business?

(Objected to as immaterial.)

A. At that time I was not associated with any of them in business excepting as stock holders in the bank of which I was cashier.

47. Were not several of them at that time directors or officers in the bank of which you were cashier?

Objected to as immatertal.

A. Yes sir; Mr. Sumner Clarke was a director and Mr. Ferd Luthy was a director and president of the bank; I believe that was all.

48. What connection with your bank at that time had Henry Sandmeyer, Sr., if you know?

Ans. He was vice president.

49. How many different conversations did you have with any of those gentlemen touching the subject of the proposed organization prior to the time you agreed to become interested in it and what was the nature of those conversations?

A. It would be difficult for me to tell now; I presume the gist of the conversation was that it promised satisfactory results in the subscription of the stock, judging the future by the past of the old company; the people being well aware of the profitable venture
968 of the old company that the new venture would certainly pay well even if not so well as the old company.

50. Was that the opinion of all the gentlemen interested, or to become interested, at that time?

A. It was very generally the opinion because they subscribed for stock afterwards.

51. At that time, what knowledge, if any, had you of the production and distribution of gas, including the expenses and profits?

(Objected to as incompetent and immaterial)

A. None except hearsay.

52. Had you prior to that time ever been a stock holder, or interested in any way, in any gas company?

A. Yes sir, as conservator for Mrs. Farnum I, as such conservator, became possessed of gas stock in Aurora and in Galesburg for that estate and, from my experience in that stock, I felt that it was very likely to be a productive investment here.

53. To what extent, if at all, during your connection with the estate mentioned did you familiarize yourself with the expense of the production of gas?

(Objected to as immaterial.)

A. I did not make myself familiar with the production of gas, or the expense of producing it, but I received the dividend checks very regularly and they were most satisfactory.

54. State whether or not prior to that time you had ever had any discussion or conversation with any of the members of the old gas company, or the company then operating in Peoria, with respect to the profit which it then earned and had been earning in the past?

(Objected to as immaterial.)

A. No sir.

55. At the time you became a stock holder in the new company, what knowledge had you respecting the prices that had been
969 charged in the past and which were then charged by the old company for gas, also concerning changes that had been made in prices and the circumstances under which those changes had been induced?

Objected to as incompetent and immaterial.

A. I had no knowledge of it, never looked anything of that kind up except to pay my gas bills, but my idea is that the prices for gas at that time was $1.25 for illuminating gas and 75 cents for fuel gas; that is my recollection.

56. Did you know at that time how long the old company had been operating at the 75 cent rate for fuel gas?

A. No sir, I don't know that I did. It seems to me now, according to my recollection, that when I first knew about it the price was $1.35 for illuminating gas and 10 cents off if paid by the 10th of the month, and it seems to me the price charged for fuel gas was then a dollar. Now, there was some talk of a competing company which I remember very well, that Mr. Danforth was interested in, and whether that rate was reduced by the old company at the time that flurry came up or not, I am not sure, but I think it had that tendency and possibly there was a reduction in the price.

57. Do you know anything of the previous history of similar reductions in price charged by the old gas company?

A. No sir.

58. Do you know anything about the prices charged in its early history and extending down to the time you came to Peoria?

A. No sir, I never looked that up at all.

58. You have no knowledge whether the prices had been constant or otherwise?

Ans. Not beyond what I have stated.

59. Had you anything whatever to do with the proposed organization of the company in which you say Mr. Danforth was interested?

970 A. No sir, Mr. McCoy, a son-in-law of Mr. Danforth's, was in the bank with me and he claimed to know something about it.

60. How many years ago was that?

A. Quite a little previous to the time—it was not while he was in the bank with us but previous to that time, and he told me about it afterwards; it was previous to the time he told me that this company was started, I don't know how long, perhaps a year or two.

61. Since you have been a resident of Peoria, is that the only time the subject of a competing company had been agitated up to the

early spring of 1899, or about the time of the proposed organization of the new company?

A. Heard talk of the necessity of one, but I would not be apt to know about such things perhaps.

62. Then within your knowledge, nothing of that kind had ever taken any definite shape before?

Ans. No sir.

63. When you finally concluded to become interested as a stock holder in the complainant company, what other gentlemen had already signified to you their intention of becoming similarly interested?

(Objected to as incompetent and immaterial.)

A. I guess Mr. Corning was one, Mr. Sandmeyer one, Ferd Luthy one and Theodore Miller.

64. Did you know to what extent they severally proposed to become subscribers to the capital stock of that company?

Objected to as immaterial.

The MASTER: I don't know about the competency of that question; what they did might be proper but what they proposed to do is another proposition, still the witness may answer subject to the objection.

A. I could not tell the amount now that Mr. Clarke subscribed but it was something over $10,000; Mr. Corning subscribed
971 $10,000; Mr. Sandmeyer $2,500; Mr. Luthy $5,000, and I subscribed $5,000; that was the actual subscription.

The MASTER: That was not the question, as I understood it.

The WITNESS: I thought if I gave that answer it would be sufficient.

65. Are those amounts substantially as you understood them to be at the time you agreed to become a stock holder also?

Objected to as immaterial.

A. I think that is it, yes; I know what I subscribed and I know what Mr. Luthy subscribed very well.

66. Those several amounts you have specified were the several subscriptions made by those gentlemen and the extent to which they became interested to the best of your recollection, were they?

Objected to as immaterial and incompetent.

The MASTER: I think the witness ought to state his knowledge and not his recollection.

A. As to personal knowledge I have none except as to Mr. Luthy's and my own; the other subscriptions may have been increased or reduced; I simply saw the amounts on the subscription list; I do not keep track of other people's business so much.

67. But that was as you understood it at that time?

A. Yes sir.

68. What connection, if any, had Mr. Corning with your bank at that time?

Ans. None.

69. Has he ever had except as doing business with your bank—I mean officially or as a director?

A. No sir.

70. I understand that all of those people, whose names you have mentioned, had arranged for their interest, or had agreed to become interested, prior to the time you did so—is that your statement?

(Objected to as immaterial and incompetent.)

972 A. I think we were together at the same time.

71. Look at the paper now shown you, marked "Exhibit 18," and state whether or not you know all the gentlemen whose names appear as subscribers to the capital stock of complainant company as shown on that exhibit?

Ans. Yes sir, I do.

72. To what extent prior to the organization of, and also prior to your subscription to, the capital stock of the complainant company did you confer with thos- gentlemen with respect to the proposed enterprise?

(Objected to as immaterial.)

A. I don't think there was any special thing said between us about it; if there was anything said there was certainly no inducement given for me to subscribe by any one—Interrupted.

Mr. TICHENOR: That is not an answer to the question I asked, and I move the court to exclude the answer as not responsive.

The MASTER: I don't think the answer responsive.

73. (Interrogatory 72 repeated to witness.)

A. With the exception of the talk I may have had with Mr. Luthy and Mr. Sumner Clarke, I don't think there was anything said by anyone to me.

74. Have you now explained in previous answers all the knowledge you had of the gas industries, or its profits prior to the time you became a subscriber to the stock of complainant company?

A. Yes sir.

75. State whether or not before your subscription was made you had become acquainted with Francis W. Little, who is now the manager of complainant company?

(Objected to as immaterial.)

A. Yes sir. I was trying to think how long he was here before this subscription was made, but I reckon he was here and if here I was acquainted with him.

76. Under what circumstances did you first meet him?

Objected to as immaterial.

973 A. I think my first acquaintance with him was in the bank in the nature of his making a deposit to his own account while here.

77. When, if at all, did you first meet Mr. Little with reference to the proposed organization of this company, or with reference to its affairs, if such meeting was after its organization?

(Objected to as immaterial.)

A. I could not say; I was a very small toad in the puddle and I don't suppose they consulted me very much.

78. How many times prior to your subscription did you confer with Sumner R. Clarke with reference to the proposed new enterprise?

(Objected to as immaterial.)

A. There was no stated meeting ever had between Mr. Clarke and myself regarding the company; casually, in the course of business—he has an office next door to me you know—it might have been a dozen times for all I know.

79. What information if any, did Mr. Clarke give you with respect to the proposed organization?

A. I don't think he ever said anything except he thought it bid fair to be a good investment.

80. Do you know of your own knowledge who was the prime mover in the organization?

(Objected to as immaterial.)

A. I do not know.

81. Who, in any of the negotiations had at that time, appeared to be in charge or be the leader in the proposed organization?

Objected to as immaterial.

A. Francis W. Little.

82. State whether or not he was in Peoria at the time the matters were first shaping themselves with reference to the organization?

(Objected to as immaterial.)

A. I don't know.

974 83. Is it not true that Mr. Little came to Peoria some time after all the preliminaries had been completed and that he was not here as a resident during the time the subscription list was being made up and the arrangement perfected for the completion of the organization?

(Objected to as immaterial.)

A. My idea is he was here, perhaps not as a resident, but here in the city in the interest, perhaps, of the new company.

84. How many times, prior to the completion of the organization of that company, did you confer with Mr. Little, or converse with him with respect to the company itself and its outlook?

Objected to as immaterial.

A. I don't know.

85. State whether or not the purpose in organizing the complainant company was to enter into competition in the production and distribution of gas in the Peoria territory with the Peoria Gas Light & Coke Co.?

Objected to as incompetent and immaterial.

A. That was my understanding.

86. State whether or not it was then further the intention of the organizers ultimately to drive the Peoria Gas Light & Coke Co. out of business in Peoria?

Objected to as incompetent and immaterial.

The MASTER: I don't think it material but the witness may answer subject to the objection.

A. I cannot say as to that; I don't know anything about it; if there was any such talk it was if in the course of business the Peoria Gas Light & Coke Co. got tired—Interrupted.

Mr. TICHENOR: I am not asking you to speculate on it and I asked the master to exclude the last answer from the record; my question called for the nature of the discussion had at that time with reference to the proposed new enterprise.

975 The MASTER: The question called for the opinion of the witness as to the ultimate effect of the organization of the new company.

Mr. TICHENOR: I did not intend to put it in that way, and if I did, I desire to withdraw it. I withdraw the question altogether.

87. State whether or not during your preliminary negotiations and preparations the question of the ultimate expulsion from Peoria territory of the old gas company was also considered by you and your associates?

(Objected to as incompetent, it being a matter for the court to determine from what was said and done.)

Mr. TICHENOR: That is what I am calling for, what was said.

The WITNESS: That is officially, I suppose.

Mr. TICHENOR: The question don't call for an official discussion, it calls for any discussion or conversation had between you and your associates.

A. I have no recollection of such talk.

88. Then you understood it to be an organization for the purpose of entering into competition with the old company in Peoria territory?

Ans. Yes sir.

89. State whether or not at that time you knew substantially the volume of business that was being carried on by the old company?

Objected to as incompetent, immaterial and already asked and answered.

A. No sir.

90. State whether or not in a general way you knew what the profits of the old company were then and what they had been in years past?

(Objected to as incompetent and immaterial.)

A. Simply from hearsay.

91. State whether or not the old gas company had ever kept its account with the bank of which you were cashier?

Ans. No sir.

976 92. Where had it kept its account, if you know?

Objected to as immaterial.

A. At the First national bank.

93. What knowledge, if any, had you at the time you became a subscriber of the amount of the investment of the old company in its plant and equipment in Peoria?

Objected to as incompetent and immaterial.

A. I have no knowledge of the amount of the capital stock except from hearsay. Do you want me to state that?

93. No. The question was aimed at the amount of the investment, not the amount of the capital stock.

Objected to same grounds.

A. I don't know anything about it.

94. Had you, or had you not, ever visited the old gas house which was then in use by that company in its production?

A. No sir.

95. Who of your associates were skilled in the gas industry at the time you were organizing the complainant company?

Objected to as immaterial.

A. I don't know of any who were; they may have had a knowledge of it; I know nothing about it.

96. Who of them within your knowledge were stockholders or had been in any gas company?

Objected to as immaterial.

A. Within my own knowledge I know of none except myself and that only as conservator of the estate I have heretofore mentioned.

97. Who, if anyone, furnished you and your associates with the estimate for the completion of the proposed gas plant in Peoria to be constructed by your company?

(Objected to as immaterial.)

A. I do not think I ever saw any estimate.

98. Up to the time of the completion of the organization
977 of your company what if any knowledge had you of the total expense of installing your gas plant in Peoria of the kind contemplated in your organization?

(Objected to as immaterial.)

A. I have none.

99. When did you, for the first time, obtain knowledge or information with respect to the proposed outlay for the plant complete?

(Objected to as immaterial.)

A. I never had any knowledge as to the amount necessary to complete it.

100. Do you know who had charge of procuring the estimate?

A. I do not.

101. Do you know whether or not up to the time your organization was completed estimates had been furnished?

A. No sir.

102. Do you know at the present time what the plant has cost in construction and equipment?

Objected to as incompetent and immaterial.

A. No sir.

103. State whether or not you were present at the time of the convening of the subscribers to the capital stock for the purpose of completing the preliminaries preparatory to filing with the secretary of state and obtaining your official certificate of organization?

A. I presume I was present, yes sir.

104. Where was that meeting held?

A. I think it was held in Sumner Clarke's office, No. 211 Main street, Peoria, Ill.

105. At the same place his office had been for many years?

A. Yes, and where it is now.

106. State whether or not all of the gentlemen, whose names appear as subscribers to the capital stock, were present at that
978 time?

Ans. I think they were.

107. At the time your arrangements for the organization were being prepared, state whether or not the parties interested were all Peoria people?

(Objected to as immaterial.)

A. Mr. Little was interested but his name does not appear on this list, so they were all Peoria people at that time.

108. State whether or not that is the only subscription list ever made to the capital stock of the complainant company?

A. I don't know of any other, at least I have not seen any other.

109. What was the financial standing of all the gentlemen whose names appear upon that subscription list?

A. Their financial standing is excellent, as good as any class of men.

110. State whether or not all of those gentlemen were then able financially to take all the stock which they had subscribed and pay for it in cash, so far as you know?

(Objected to as immaterial.)

A. With one exception I believe they were abundantly able.

111. State whether or not the exception you make is Sumner R. Clarke?

Ans. No sir.

112. State whether or not within your knowledge all of the gentlemen did take the several amounts for which they subscribed as shown by Exhibit 18?

(Objected to as immaterial.)

A. I understood that Mr. Sandmeyer drew out; he is the only one and I don't know anything about that but I understood he did not take his stock.

113. Do you know of your own knowledge the reason why he did not carry out the terms of his subscription?

A. I do not; it is my recollection that he thought it would not pay, perhaps, and wanted to draw out of it; I think when
979 the subscription was made and the money was to be forthcoming he did not want to carry it out; I know that much because I wanted it.

114. When was the first assessment made upon this stock and what was the amount?

(Objected to as incompetent and immaterial)

The MASTER: I do not think it the best evidence; I think, however, it is a matter that can be proved by parol testimony and the witness may answer subject to the objection.

A. I could not give the date, but 20 % was asked on the subscription on the first assessment.

115. State whether or not within your knowledge that assessment was paid?

(Objected to same grounds as before)

A. Yes sir; that is, those of whom I have knowledge paid it; I know mine was paid and Mr. Luthy's was paid; I have personal knowledge of both of those; beyond that I don't know.

116. Have you also personal knowledge of the payment by Mr. Clerke of his subscription?

Ans. No sir.

117. Are you able to state about how long after the organization was completed, that assessment was called for?

Objected to as incompetent and immaterial.

A. No sir; I could not tell the exact date, but I calculate it was about 3 months, or two months, or a month; somewhere along there.

118. When was it, with reference to the time the ordinance was passed granting a franchise or license to your company to occupy the streets etc., of Peoria?

Ans. I could not say.

119. When was it with reference to the time the company opened an office in Peoria, if you remember?

Objected to as incompetent and immaterial.

A. I don't know.

120. Where was the office of the company when it was first opened here?

Ans. It was right next to where Mr. Clarke's office was at first, then they afterwards rented an office up where Zeigler's un-
980 dertaking establishment is now.

121. How many assessments on the capital stock were made during the year next after the completion of the organization of the company?

(Objected to as incompetent and immaterial.)

A. Just the one assessment.

122. How many assessments upon the capital stock have been made up to the present time?

(Objected to same grounds.)

A. No other assessment has been made.

123. State whether or not you have ever been an officer or director in the complainant company?

(Objected to same grounds.)

A. Yes sir; I was a director from the organization of the company up to about a year ago, perhaps a little less than a year ago.

124. What were the circumstances under which you severed your connection with the company as a director?

Objected to same grounds.

A. I tendered my resignation.

125. State whether or not such resignation was voluntary or involuntary?

(Objected to same grounds.)

A. It was voluntary. It was thought best for the interests of the company that I step out and I stepped out.

126. From whom did that suggestion come?

(Objected to same grou-.)

A. Mr. Little, I think.

127. State whether or not that subject was first presented to you at a meeting of the board of directors of your company?

Objected to as immaterial.

A. I am not sure that it came during a meeting of the directors; I think it came personally from Mr. Little at other than a directors' meeting.

128. Who succeeded you on the directory?

Objected to as incompetent and immaterial.

A. I don't know.

981 129. Do you know when the vacancy was filled with reference to your resignation?

(Objected to as immaterial and incompetent)

A. I do not.

130. What reasons, if any, were given for asking your retirement from the board?

(Objected to same grounds)

A. I don't remember that there was any particular reason given excepting that it was for the good of the company perhaps.

131. To what extent did you attend the directors' meetings during the time you were connected with the company in the capacity which you have stated?

(Objected to same grounds)

A. Usually when notice was given to me I would attend the directors' meetings; sometimes I was called to attend a meeting when notice perhaps had not been given, but I could not say as to how many meetings I attended.

132. You were a director, were you not, during the period of the construction of your company's plant?

(Objected to as immaterial)

A. I must have been.

133. State to what extent the subject of construction and the expenses from time to time, as the work progressed, were under discussion by the directory during the period covered by your membership?

(Objected to as incompetent and immaterial)

A. I suppose the expense of construction was brought up, of course, before the directors; I think it was attended to by the directors as any other well-conducted corporation would be.

134. State whether or not any statements from month to month, or otherwise, showing expense account were presented to the board of directors and considered and passed upon by them?

A. I think there were yes sir.

135. Did you or not examine those expense accounts?

A. No sir.

136. Upon whom devolved the duty of passing upon and approving or disapproving those statements of expenditures?

981½ Objected to as immaterial.

A. Mr. Little was the man in authority and I think he passed upon all of them.

137. What, if any, jurisdiction in that regard was vested in the board of directors?

(Objected to as incompetent and immaterial.)

A. I don't know of any except as I have stated, there were people on the board of directors who were much more largely interested than I to keep track of the work and expenses and the estimates as they were shown.

138. State whether or not your board had a committee to which was entrusted the duty of supervising the construction?

Objected to same grounds as before.

A. The whole of the construction was in the hands of Mr. Little, I don't think there was a committee of the directors other than that; Mr. Little made a report to the board of directors and I don't think there was any other committee than that.

139. State whether or not from time to time the directory took any action with reference to the reports to which you have referred?

(Objected to same grounds.)

A. Many reports were read to the board and passed upon by the directors, whether all of them were or not, of course, I could not say.

140. Who, if any, of the members of the directory were skilled in handling accounts?

(Objected to as immaterial.)

A. In my particular line I have had experience in handling accounts but that was not in the gas line.

141. Is it not true that substantially all of the members of the directory had had very large experience in handling accounts?

Objected to as immaterial.

A. Yes sir.

982 142. State whether or not those reports were incorporated in the minutes of the meetings from time to time?

Objected to as incompetent and immaterial.

A. I don't know; Mr. Miller was the secretary and I presume they were part of the minutes of the board of directors.

143. Who during that time was president of the board?

A. I think Sumner Clarke; he is now at any rate.

144. State whether or not during the time that your company was preparing for its business the old company made any threats or statements with reference to reducing the prices of gas in the event of the introduction into the field of a competing gas company?

(Objected to as incompetent and immaterial.)

A. No sir.

145. What, if any, change in the prices of gas in Peoria were made during the time you were engaged in construction?

Objected to same grounds.

A. As stated before, my impression is that illuminating gas was $1.35 with ten cents off if paid by the 10th of the month and that fuel gas was less than that,—there was a difference between the two at that time but whether it was down to 75 cents or not I could not tell.

146. Do you remember whether or not any further changes were made in those prices during the time you were engaged in construction?

(Objected to same grounds.)

A. I don't remember.

147. To what extent, if at all, was the subject of prices discussed in the directory during the time elapsing prior to the completion of your plant ready for the distribution of gas?

Objected to same grounds.

983 A. Simply the talk of the individual members which was this I remember very well because I favored it; that was, to reduce the price of fuel gas to 65 cents and illuminating gas to 90 cents; that was the talk among a few of our directors as being the thing to do for the dear people.

148. Was that subject also discussed in the board meetings?

Objected to same grounds.

A. I don't know that it was.

149. Were those the only figures ever considered in the manner you have testified so far as your present recollection is concerned?

(Objected to same grounds.)

A. Favoring that amount, as I stated to you, it impressed me as being a good thing to do because I thought it would satisfy the people; I don't think there was anything said further than that; it was, I know, considered by several of the people interested with me there.

150. Did you know during the time those discussions regarding prices were in progress the volume of gas per day distributed in Peoria?

A. Those figures may have been given to me and I not remember

them, for I was not interested in them; I don't remember at al now.

151. Did you have before you any information with reference t the proportion of the distribution that was for fuel purposes an that for illuminating purposes?

(Objected to same grounds)

A. We may have had at that time but I don't remember now the difference.

152. Did you know at that time for how long a period the old company had been furnishing gas for fuel purposes?

A. No, I didn't know.

984 153. State what, if anything, the board of directors had to do with fixing the price of gas furnished by your company at the time it was ready to commence operations?

Objected to as incompetent and immaterial.

A. I think it was considered at that time and thought best to make it the rate that has been made which, you know, was $1.00 for illuminating gas and 75 cents for fuel gas.

154. Were the prices which you have named the ones adopted and at which gas was furnished in the beginning of your company's operations?

(Objected to same grounds.)

A. I think it was.

155. State what if anything had been done or considered by the board, or by the members of it, prior to the fixing of the rates which you have mentioned, so far as pertains to that particular subject?

(Objected to same grounds).

The MASTER: I don't think it competent to show what has been done by individual members; the action by the board is the controlling feature, I think, but the witness may answer subject to the objection.

A. Have not I already answered that, when I told you we had talked of 65 cents for fuel gas and 90 cents for illuminating gas; that was simply the personal ideas of one or two of the directors.

Defendant objects to the foregoin- answer as not responsive and moves the court to exclude it.

156. State whether or not the board of directors at all times, while you were a member, fixed the prices that should be charged by your company?

(Objected to same grounds as before).

A. Yes sir.

157. Who on the board was skilled in the gas manufacture and distribution?

Ans. Mr. Little.

985 158. Was he the only one?

A. I don't know of any one except Mr. Little that was particularly expert in the gas business.

159. To what extent, if at all, did he participate in the discussions having for their object the fixing of prices?

Objected to as incompetent and immaterial.

A. Having the knowledge he had, he had a good deal to say about such things.

160. Upon whom, other than Mr. Little, did you depend for information as to the cost of production and distribution and the prices at which gas could be furnished to consumers?

Objected to same grounds.

A. No one else.

161. During the time of your construction and the early history of your company after it began to furnish gas, did you know to what extent Mr. Little was skilled in the manufacture and distribution of gas?

(Objected to same grounds.)

A. I had known he had been engaged in the manufacture of gas and that otherwise he was a very bright man.

162. Did you know what place he had occupied prior to coming to Peoria?

(Objected to same grounds.)

A. I knew he was connected with the gas business in Souix City, Iowa, and in Lincoln, Neb. from his conversation relating his experiences.

163. State whether or not you also knew he had recently been employed as manager of the Akron, Ohio, gas company?

(Objected to same grounds.)

A. No, I did not; I might have heard something about it, though, in his experiences as related.

164. State whether or not during the time you were a director any changes in the price of gas were made by your company,

986 if so, when and what were they?

(Objected to same grounds.)

A. My recollection is now that the price of fuel gas was raised from 75 cents to $1.00 per thousand, owing to a prosecution that was gotten up, as I understood it, by the Peoria Journal Co., claiming that the company could not sell the same gas going through the same pipe at two different rates, that the rate must be one or the other, and I think the company made the rate $1.00 for both fuel and illuminating gas.

165. State whether or not that was the only change in rates mad during your incumbency of the office mentioned?

Objected to same grounds.

A. I don't know of anything further.

166. State if it is not true that during the time you were a mem ber of the board of directors the complainant may have sometime furnished gas at 50 cents per thousand and also at 30 cents per thou sand to consumers generally in the city of Peoria?

Objected to same grounds.

A. I don't think the company of which I was a member furnished gas at that price; I think that was done by the old company.

167. State if it is not true that your company about July 31, 1900, met the cut in prices made by the old company?

Objected to same grounds.

A. I don't know whether they did or not.

168. Do you know of the making of the contract by your com- pany during the time you were a director to furnish the county of Peoria gas at 25 cents per thousand cubic feet?

(Objected to same grounds.)

A. I knew nothing about it except the report I may have seen in the paper; when I was on the board of directors and attending, I don't know that anything of that kind came up.

169. To what extent did the territory covered by your com-
987 pany at the time it began to serve gas, coincide with that already occupied by the Peoria Gas Light & Coke Co.?

Objected to same grounds.

A. I don't know.

170. State if it is not true that you have many service pipes in buildings where the old company also had services and where they had had them for many years?

(Objected to same grounds.)

A. Yes sir.

171. State further if that state of affairs did not continue for some time after you began to serve gas?

Objected to same grounds.

A. I presume so, I don't know of my own knowledge.

172. Do you know the circumstances under which the prices of gas were restored to $1.00 and 75 cents along about the month of August, 1900?

(Objected to same grounds.)

A. I do not.

173. Did you know that the two companies, yours and the Peoria

Gas Light & Coke Co., about that time were on the point of raising the price and putting it at the rates named?

Objected to as incompetent, immaterial and assuming they did have in contemplation such a raise.

A. No sir, I did not.

174. State whether or not there was any discussion of that question in your directory prior to about the 31st day of July 1900?

(Objected to as incompetent and immaterial and not the best evidence.)

A. I have no recollection of it.

175. State whether or not you now remember a publication of those new rates in the Peoria press on or about the date named, a notice having been given to the press by your company and also on the same date by the Peoria Gas Light & Coke Co.?

988 Objected to as immaterial.

A. I guess I saw something of it in the papers but I don't remember of anything that transpired in our board about it while I was present.

176. Do you know who fixed the rate published in the public press by your company about the 31st day of July, 1900?

Objected to as immaterial and incompetent.

A. I would think our manager, Mr. Little, did.

177. Have you any personal knowledge of it yourself?

Ans. No.

178. Look at page 8, of the answer filed in this case purporting to contain copies of the advertisement in the Peoria press, to which your attention has been directed, and state whether or not you recognize those as having been made out about the time mentioned.

Objected to as incompetent and immaterial.

A. No sir, I don't remember of seeing them.

179. Do you remember any discussion in your board or among the members of your directory, or among the stock holders of your company, with respect to that publication at or about the time it appeared in the Peoria press?

(Objected to same grounds.)

A. No sir.

180. State whether or not you as a director, or otherwise, was ever consulted with reference to the restoration of those rates and the publication of them at or about the time mentioned?

Objected to same grounds.

A. I have no recollection of being consulted about it at all.

181. When did you for the first time know that those rates had been made and from what source did you obtain that information?

Objected to same grounds.

A. I have no knowledge when it was; I have no recollec-
989 tion of the rates being made or being consulted in the matter or having any voice in the making of the rates.

182. State if you remember at what rates those two gas companies were furnishing gas prior to the publication of the notice to which your attention has been directed.

Objected to same grounds.

A. My impression was it was $1.35 for illuminating and 85 cents for fuel with 10 cents off each price if paid before the 10th of the month.

183. Is it your recollection those were the lowest rates made by your company prior to July 31, 1900?

Objected to as immaterial.

A. With the exception of the special rates, if any were made, and you say they were—to my knowledge there were none made—in the way of contracts for two or three years to furnish gas to meet the competition of the Peoria Gas Light and Coke Co.—I don't know of any lower rate made.

184. When with reference to the time your company began to serve gas did you begin to take from that company?

Objected to as immaterial.

A. It was some months after they started; I know I wanted service pipes put into my house but they were busy doing like work for others and I didn't get it as soon as I wanted it.

185. Are you able to state about when your company began to supply gas to the public?

Ans. No sir.

186. State whether or not there was any time prior to July 31, 1900, when the rates you paid for gas were less than those specified in the notices to which your attention has been directed?

(Objected to as incompetent and immaterial.)

A. No sir.

187. Did you personally pay the gas bills for your residence so you would know if a lower rate was given?

Objected to as immaterial.

990 A. My gas bills are brought in the bank as part of the clearings; whatever bank carries the gas account I arrange with them to have the bills brought into the bank, I never go to the office, the bills are paid without question; I don't know as I ever noticed the bills.

188. Was that true of the old company as well as the new?
A. Yes sir, it would be especially true of the old company.
189. And the same arrangement has been continued since the new company went into operation?
Ans. Yes sir.
190. Then within your knowledge no lower rates than those mentioned in these notices were ever made by your company or by the old company?

(Objected to as incompetent, immaterial.)

A. Not to my recollection or knowledge.
191. Was your official connection with the complainant company such that if lower rates had been made you would have known it?

Objected to as immaterial.

A. I might not, as in the case of the contract spoken of, in which it is said because of competition gas was furnished at a less rate for a term of years; I had heard of contracts being made with parties by the old company with parties who took it for one, two or three years, where they got it at a less price, and such contracts may have been made by the new company by the stress of competition, but I was not aware of it.
192. State whether or not it was one of the purposes of your organization to benefit the city and citizens of Peoria by giving them competition and thereby lowering the prices for gas?

Objected to as incompetent and immaterial.

A. That was partially the desire.
193. What, if anything, did you have to do with securing the frontage required by law as a basis upon which to obtain
991 your license from the city of Peoria?

(Objected to as immaterial.)

A. Nothing.
194. Did you as a party interested in the company know of what was being done in that direction?
Ans. Yes sir.
195. What inducements, if any, within your knowledge, were held out to the owners of property in Peoria in approaching them to secure their signatures to frontage required for the purpose indicated?

Objected to as incompetent, immaterial and assuming there were inducements held out.

A. I know of none except the argument of competition perhaps in the disposing of the gas.
196. Do you know who had charge of that portion of the work?
A. I think Theodore Miller.
197. Prior to the presentation of the ordinance granting a license to your company, were you advised of its contents and scope?

Objected to as immaterial.

A. I think I read it before presentation or printed copies made of it.

198. State whether or not you were consulted with reference to its preparation and what it should contain?

Objected to as immaterial.

A. No sir.

199. What if anything did you have to do with the passage of the ordinance in question?

(Objected to as immaterial.)

A. The only thing I had to do with it, I think, was to go up to the council chamber to see what was done there; I don't know that I had any influence on it, though, but I know I was up there.

200. Was that at a meeting of the council or otherwise?

A. Yes sir, it was at a meeting.

992 201. How many meetings of the council did you attend-*ing* during the pendency of this ordinance?

(Objected to as immaterial.)

A. I believe that was the only one.

202. State whether or not you attended any meeting of the committee of the council before whom the ordinance was pending?

A. No sir.

203. Did you know about the time of the presentation of the ordinance?

(Objected to as immaterial.)

A. Yes, or I should not have gone up there.

204. When with reference to the time the ordinance was presented was it you attended that meeting of the council?

Objected to as immaterial.

A. I am not sure whether the ordinance was passed that night or not, but I think it was, and I felt a little as though it was important perhaps for me to be there.

205. What other subscribers to the capital stock of complainant company was present with you?

A. I remember that Robert Clarke was there; Charles Clarke, I think, was there; Sumner Clarke was there, also Theodore Miller; I think Chauncey Clarke was there at that time, and I believe Mr. Warren was there.

206. State whether or not during the pendency of the ordinance before the council you were advised from time to time of its status or the progress being made, or the attitude taken by different members of the council with reference to the proposed ordinance?

Objected to as immaterial.

A. I don't think I was with the exception, perhaps, in a general way; I might have been told things were going along all right.

207. Prior to the passage of the ordinance, did you know how the council stood upon the question of its passage?

993 Objected to as immaterial.

A. No sir.

208. Who were the aldermen in the council from your ward at that time?

A. I cannot say, for I don't know which ward I was living in at the time; I think I moved in October, 1899, up on the *the* bluff into the 5th ward; I think I was living on Perry street in the second ward in May 1899.

209. Do you know John R. Walsh of Chicago?

Ans. Yes.

210. How long have you known him?

A. Perhaps 3 years personally.

211. What is his business?

A. President of the Chicago national bank.

212. Mr. Walsh is interested in the plaintiff company, is he not?

Ans. I believe so.

213. When did you first see Mr. Walsh, and under what circumstances, with reference to any business connected with the complainant company?

(Objected to as immaterial.)

A. I think I met Mr. Walsh in Peoria first to become personally acquainted with him after the new company was organized.

214. When you became a subscriber to the capital stock of this company, did you or not know that Mr. Walsh was to be interested in it?

Ans. I did.

215. Through what channel was that information conveyed to you?

Objected to as immaterial.

A. By Mr. Little, I think.

216. Did you then know in what way he was to become interested?

Objected to as immaterial.

A. No, except as a stockholder as anyone else might be.

217. Did you know at that time what stock he was to have?

994 A. No and I do not to this day know what he has got.

218. Do you know where he obtained the stock he holds at the present time?

(Objected to as immaterial.)

A. I do not.

219. Were you given to understand at the time you came i
tact with Mr. Walsh in connection with this business that h
skilled in the gas industry?

(Objected to as immaterial.)

A. Yes sir.

220. Do you know where he had gas plants or gas holdin
that time?

(Objected to as immaterial.)

A. I do not.

221. Do you know the occasion of Mr. Walsh being in Peori
the time you met him, as testified to?

A. By hearsay, not of my own knowledge, I met him incidenta

222. Do you know it from anything Mr. Walsh said to you
that time?

A. No sir, except in this way; I being in the banking busi
here wanted the business of this new company for our bank
could obtain it and I think I made it my business to see him
garding that.

223. At that time Mr. Walsh was not an officer of the compa
or a director was he?

Ans. No sir.

224. And so far as your knowledge extends he had no interest
the company?

A. Excepting from hearsay, that he had stock.

225. So far as shown by the stock subscription list, he was not
stockholder, was he?

Ans. No, I think not.

226. What, if any conversation, did you have with Mr. Walsh i
that connection with reference to the prospects of the company?

A. I cannot recollect the conversation we had at all.

227. State whether or not the subject of its possibilities
995 were then considered by you and Mr. Walsh?

Objected to as immaterial.

A. I think there was nothing said by me to him regarding the gas
company.

228. On how many occasions about that time did you see Mr.
Walsh in Peoria?

(Objected to as immaterial.)

A. That was, I think, the only time I saw him here, though I
heard he was here afterwards. I have had occasion to see him many
times since in Chicago; I have been going up to see him; I like to
go into his bank building there.

229. Do you know what induced Mr. Walsh to become interested
in the complainant company?

Ans. I do not.

230. Do you know whether or not he was the person who originated the idea of establishing a competitive company here?

A. I do not; I think that idea obtained in the minds of a good many people.

231. I mean the idea of organizing this particular company?

A. No, I don't know.

232. Has Mr. Walsh ever been a member of the board of directors of your company?

Ans. I think not.

233. Has he ever attended board meetings?

A. Not to my knowledge.

234. To what extent within your knowledge did he control the action of the board, or the management of the gas company, and has he up to the present time?

(Objected to as incompetent and immaterial.)

A. He was not there and, of course, I don't know what influence he had with anyone else, but apparently he did not have any control over it.

235. State whether or not at any of the board meetings you attended communications from Mr. Walsh were presented and
996 taken under consideration?

(Objected to same grounds as before.)

A. I believe not.

236. State if at any time you had any conversation with Mr. Walsh with respect to the rates at which gas could be furnished in Peoria, if so, state what the conversation was?

Objected to same grounds.

A. No sir.

237. State whether or not prior to the time your company began to furnish gas there was any discussion between yourself and other members of the board or other stock holders, or with Mr. Walsh, respecting the prices at which gas could profitably be furnished to consumers in Peoria?

Objected to as incompetent, immaterial and already asked and answered.

A. Without regard to the profit which could be made out of it there was a discussion, in fact, I have had several of them with directors and with stock holders regarding the price of gas.

238. Were those the same discussions to which you have already referred in your testimony?

Ans. Yes sir.

239. And those are the only ones?

Ans. Yes sir.

240. Do you remember of any resignations from the board of

directors prior to the time you severed your connection with the board?

(Objected to as immaterial.)

A. I don't remember.

241. Do you remember whether Philo B. Miles and O. J. Bailey were or were not members of the original directory?

A. It seems to me they were members; I know there was some change in the directory but I could not tell what it was.

242. Are you able to state from recollection whether those two gentlemen served their full term?

Ans. I think not.

243. Do you know the circumstances under which they severed their connection with the bank?

997

A. I do not; I barely remember that they were members of it.

244. Did they attend the meetings with regularity while their membership continued?

A. I don't think they were long members; I don't think I sat with them on the board; if I did it was only once or twice.

245. Do you know Lyman A. Walton of Chicago as being connected with the complainant company?

Ans. Yes sir.

246. What is his business, if you know?

A. think he is vice president of the Equitable Trust Co. in Chicago.

247. What if any connection has Mr. Walsh with that company?

A. I think he is president of that company.

248. Was Mr. Walton at one time elected a director of the complainant company?

Ans. I think he was.

249. Do you remember whose place he filled? and whether by resignation or expiration of term?

Ans. I do not.

250. State whether or not Mr. Walton is now or ever has been a stockholder of complainant company within your knowledge?

Objected to as immaterial.

A. He would have to be a stockholder, of course, to become a director, but I don't know what stock he has.

251. And you have no knowledge as to where he obtained it?

A. No sir.

252. In what business was Mr. Miles then engaged and in what business had he been for a number of years?

A. In the grain commission business.

263. In what business has Mr. Bailey been engaged and was he then?

A. He was president of the Central national bank and president

f the Dime savings bank; I think he was also a member of the firm of Bourland and Bailey.

98 264. How long has Mr. Bailey been identified with the banking interests of Peoria in a prominent way?

A. He became president of the Central bank on the death of Mr. ightner and he was identified with the Dime savings bank before iat. Ever since I have known him he has been identified with ie banking interests of the city.

265. State whether the minutes of the proceedings before the oard of directors was kept by your secretary and subsequently pre-ented for approval or disapproval?

(Objected to as immaterial)

A. The minutes were kept by the secretary and read at the next eeting and disposed of at that time as to their correctness.

266. State whether or not all matters of business concerning the ompany discussed before the board were made a matter of record i the manner you have mentioned?

Objected to as immaterial.

A. I think things which came up before the board that were ma-rial to the company were made a matter of record; sometimes a iscussion comes up in a board of that kind that should not properly o on the minutes, but the ordinary business of the meetings were it in the record by the secretary.

267. Look at the paper now shown you marked "Exhibit 19" and ate whether or not it bears your genuine signature?

A. Yes sir, that is my signature.

268. What were the circumstances under which you signed that aper?

A. It was a request, as stated here, for a franchise, I suppose.

269. Who presented the paper to you?

A. I could not say now.

270. When did you first learn of it with reference to the time ou signed it?

Ans. I could not say as to that.

99 271. Did you or did you not know that such a document was to be presented to the council?

A. Yes sir, I knew it was necessary always to have it.

272. State whether or not at the time you signed "Exhibit 19" ie name in advance of yours had already been signed to it?

A. I could not say as to that but I presume so, because I put my ame in a regular line after the other name.

273. State whether or not at the time you signed "Exhibit 19" ou believed the statements that it contained were true?

A. This must have been true because time has shown it was true garding the building of the plant, etc.

Defendant objects to the foregoing answer as not responsive and oves the court to exclude it.

274. (Interrogatory 273 repeated to witness.)
A. Yes sir.
275. Did you at that time in good faith believe that the company would carry out the representations embodied in "Exhibit 19"?
A. Yes sir.
276. Did you also at that time believe that the company would be able to carry them out in good faith?
Ans. Yes sir.
277. State whether or not you signed that paper for the purpose among other things, of inducing the council to which it was presented to grant a franchise to your company to use the streets and alleys of the city of Peoria?

Objected to as incompetent and immaterial.

A. I don't think that entered my mind but simply as a petition to the council to grant the prayer of the petition.
278. What if any discussion passed between you and any of the other gentlemen whose names appear upon Exhibit 19 either than or before or subsequently with reference to the contents of that paper?

A. I don't think any remark was made about it; I don't
1000 think I had any consultation with anyone regarding it.

279. When you signed it, did you know you were doing so for the purpose of having it presented to the city council?
A. I presume so; looking at the heading of the paper, I would naturally know it was to be presented.
280. Did you also know it was to be used in connection with the passage of the ordinance which had previously been presented to the city council?
Ans. Yes sir.
281. At the time you signed that paper, did you know the prices at which gas was being furnished by the Peoria Gas Light & Coke Co.?
A. I presume I did.
282. How long, if at all, at the time Exhibit 19 was signed had you been a consumer of fuel gas in the city of Peoria?
A. I could not answer that question for I don't know; I had been a consumer of fuel gas I think for sometime; I was married in 1891 and I know we went to using fuel gas right away, for we had a gas stove and used it.
283. And you continued using it, did you, up to this time?
A. Yes sir.

Cross interrogatories by Mr. IRWIN:

1. Referring to "Exhibit 19," you stated on direct examination that at the time you signed that exhibit you believed the statements therein to be true—do you now believe those statements to be true?

(Objected to as not cross-examination and also calling for a conclusion.)

A. I do.

Re-direct interrogatories by Mr. TICHENOR:

1. What was the price of fuel gas furnished in Peoria on the day you signed that paper?

Ans. I don't remember I am sure.

1001 2. Was it not 75 cents?

Ans. I think it was.

3. What is the price of fuel gas in Peoria today?

A. $1.00.

4. How long has it been that price?

A. Ever since the Journal Co. suit compelled it to be made so which was sometime last summer, I think.

BENJAMIN WARREN, JR., called on behalf of the defendant, being first duly sworn according to law deposes and says:

Direct examination by Mr. TICHENOR:

1. State your name and place of residence?

A. Benjamin Warren Jr., Peoria, Ill.

2. What is your business?

A. My principal business is the grain business and elevator business.

3. How long have you been engaged in that line of business?

A. 26 years this month.

4. During all of that time in Peoria, Ill.?

A. I have been in business in Peoria 26 years next week, and had been in the grain business some three or four years prior to that time.

5. In what other line of business have you been engaged during the 26 years to which you have just referred?

A. Manufacture of wagons; was in the newspaper business for awhile and have done a little railroad business.

6. With what wagon works have you been identified?

A. I am president of the Peoria Wagon Co.

7. How long have you been its president?

A. About 10 years, I think.

8. That is a company operating in connection with the

1002 Avery Manufacturing Company?

A. It is independent of the Avery Company but we have sold them our product for the last three years.

9. Mr. Avery, president of the Avery Co., is also an officer in the wagon Co.?

A. Yes sir, he is treasurer and manager.

10. With what ne-spaper have you been identified and in what capacity?

A. I was one of the founders of the Peoria Herald and was its president for four or five years.

11. How long is it since you severed your connection with that paper?

A. I think I severed my connection with it about six years ago.

12. You are interested in the complainant company, are you not?

A. Yes sir.

13. And have been since its organization?

Ans. Yes sir.

14. You are the same Benjamin Warren that signed the original stock subscription, are you not?

Ans. Yes sir.

15. When, with reference to the time you became a subscriber, did you begin an investigation with reference to the possibilities of profit or otherwise of a competing gas company in Peoria?

Objected to as immaterial.

A. I had some knowledge for a number of years it was a profitable business, although I don't know that I had any particular knowledge of the dividends the old company paid.

16. Before becoming a subscriber to the stock of this company did you make any special investigation or inquiry for the purpose of informing yourself concerning the advantages to stockholders to accrue from the organization of a company of this character in Peoria?

(Objected to as immaterial.)

A. I made some investigation about that time so far as it
1003 was possible to do so.

17. Through what channels did you prosecute your inquiries?

Objected to as immaterial.

A. I don't think I could answer that except in a general way. There did not seem to be any dispute but what the business was profitable here and always had been.

18. For how long a period of time had you known the management of the Peoria Gas Light & Coke Co.?

A. I had known the management ever since I came to the city.

19. Who were the men prominently identified with the old company at that time?

(Objected to as immaterial.)

A. Thomas Coffey was manager of the company, I believe, and a stock holder, Mathew Henrbery, Wm. A. Herron, Leslie Robison, and I think Peter Coffey was alive at that time, but I am not sure.

20. What was the standing of the gentlemen whose names you have mentioned as regards wealth?

A. I think their standing was good; I never heard any criticism on any of them financially.

21. Were they men of large means or small means?

A. I should say a couple of them were men of large means.

22. Do you know anything about the financial standing of Thomas Coffey, to whom you have referred?

Ans. Very little.

23. In what line of business, other than the gas business, were those gentlemen interested, if at all, to your knowledge?

A. Mathew Henebery's principal business was wholesale liquor and distilling; he was also vice president of the First national bank here and is today; Mr. Herron is a well known banker here.

24. What was Thomas Coffey's official connection with the old gas company in the early part of 1899?

A. My recollection is he was general manager of the company and had been for years.

1004 25. Was he president also at that time?

A. I am inclined to think not, although I could not say certainly; he was president of the electric light company.

26. What portion of Peoria, and the territory tributary thereto where gas would be needed, was covered by the old company in the early part of 1899?

(Objected to as incompetent and immaterial.)

A. I have no knowledge on that question except a general knowledge; I think it had mains in the principal streets, at least there were consumers.

27. Wherever there was any demand for gas, they had mains?

Objected to same grounds.

A. Wherever there was sufficient demand.

28. Do you know how long that company had been in existence in Peoria?

Ans. I do not.

29. Had it been here during all the time covered by your residence in Peoria?

Ans. Yes sir.

30. And it was established prior to the time you took up your residence here?

Ans. Yes sir.

31. State what within your knowledge was the capacity of the old company with respect to the demand for gas in Peoria, and the territory adjacent thereto?

Objected to as incompetent and immaterial.

A. I don't know.

32. What was the daily gas consumption in Peoria at that time, if you know?

(Objected to same grounds.)

A. I don't know.

33. What if any knowledge had you of the gas industry at the time you contemplated becoming interested in the plaintiff company?

A. Very little knowledge.

34. State whether or not prior to becoming a subscriber to the stock in question you had ever been a stock holder in any
1005 other gas company?

Ans. No sir, I had not.

35. State whether or not you then knew the cost of producing and distributing gas in a city like Peoria?

A. I did not.

36. State whether or not at the time you made your subscription you knew substantially the necessary outlay for installing a completed plant in Peoria?

Objected to as incompetent and immaterial.

A. I didn't know the exact figures only in a general way; I knew about what it would cost.

37. From what sources did you obtain that information?

Objected to same grounds.

A. Principally from the projectors of this company.

38. Who among the projectors were skilled in the gas industry or installing of gas plants?

A. Do you mean who had been interested in other companies?

39. Well, who were there that were skilled in the gas industry?

Ans. Mr. Little; Mr. Walsh prior to that had been interested in one or more companies.

40. State whether or not both of those gentlemen were interested, or if it were generally known they were to become interested with the rest of you from the inception of the project?

Objected to as immaterial.

A. I think it was understood that they were.

41. State whether or not any of the people who subscribed the list originally were skilled in the installing of gas plants or had had any previous experience?

A. I don't think I could answer that; I don't know.

42. State whether or not you then knew personally all of the gentlemen who subscribed the stock subscription list with you?

A. Yes sir, I was well acquainted with all of them.

1006 43. How long had you known them?

A. Well, some of them back from the time I came to Peoria; Mr. Littlewood only from the time he came to Peoria and

Mr. Corning from the time he came here; the Clarkes I had known and Mr. Miles I knew before he came here and the rest of them soon after I came.

44. Within your knowledge had any of those gentlemen ever had any experience in the construction or operation of a gas plant?

Objected to as immaterial.

A. Not that I know of.

45. Upon whom did you depend for information relative to the expense of installing and operating a gas plant of the kind in contemplation in Peoria?

(Objected to as immaterial and incompetent.)

A. My information came largely from Theo. Miller; he was the gentleman who spoke to me about it first.

46. What representations, if any, did Mr. Miller make to you with respect to probable profits to be derived from placing and operating a competitive gas plant in Peoria?

Objected to same grounds.

A. I don't think he made any positive statements about the prospective profits.

47. What, if any, knowledge had you at that time with regard to the profit which such a plant might make and reasonably would make?

Objected to as immaterial.

A. I don't think I had any specific knowledge.

48. Had Mr. Miller any acquaintance with the manufacture and distribution of gas, or the construction of a gas plant?

Objected to as immaterial.

A. I don't think he did.

49. What purpose had you and your associates in view in the establishment and operation of a competitive plant of this kind?

Objected to as immaterial and incompetent so far as it relates to anybody except the witness.

1007 A. One thing I think of was better service and better treatment of customers; I also thought it would be a good thing for the city to have competition.

50. Were you at that time familiar with the history of gas questions in other cities where competitive plants had been installed?

Ans. No sir.

51. Did you then have any knowledge of that subject in the city of Chicago, Illinois?

Ans. No sir.

52. State whether or not it was one of the purposes of your organ-

ization to furnish gas at lower prices than those charged by the old company?

(Objected to as incompetent and immaterial.)

A. I think in a general way the intention was to have some lower prices.

53. State whether or not that subject was a matter of discussion between you and your associates prior to the time the subscription list was signed?

(Objected to as immaterial.)

A. I think it was.

54. What was the nature of that discussion—what was said?

Objected to as incompetent and immaterial.

A. I don't remember any particular conversation.

55. State whether or not you ever had any conversation with F. W. Little, who has testified in this case, with respect to the prices at which gas could profitably be furnished to consumers in Peoria?

A. I don't recollect of any.

56. Were there any reasons, other than those you have now mentioned, which led to the organization of the complainant company?

Objected to as immaterial.

A. I don't know of any.

57. Who was the first to interest you in the proposed organization?

Ans. Theo. J. Miller spoke to me first about it.

58. What inducement, if any, did he hold out to you as a 1008 reason why you should become an interested party?

Objected to as incompetent and immaterial.

A. I don't know of anything more than I have stated; he thought it would be a good thing for Peoria to have another company; I think he alluded to the old legal fight I had with Tom Coffey that might induce me to want to go into it.

59. Then in a measure, as I understand you, he made it with you a personal matter, did he?

Ans. Somewhat, yes sir.

60. Is it true then that when the subject was first introduced to you, you were disinclined to participate in the organization and furnish a portion of its capital?

A. I don't think I was disinclined; I didn't say that did I?

61. No, but my inference was drawn from the fact you say he used that as an argument why you should become interested?

A. Not particularly in argument; he stated it as one of the reasons, but I did not allude to that as having any particular bearing on the subject.

62. State what your principal reason was in becoming interested in the proposed organization?

(Objected to as immaterial.)

A. I don't think of any other than I have stated.

63. My question calls for the principal reason that induced you to become interested?

A. It would be pretty hard to give the principal reason; generally, there was a good deal of prejudice against the old company, their methods and treatment of patrons; then there was a pretty good crowd of fellows going into it; I guess I am easy anyway in going into outside matters.

64. With whom, other than with Mr. Miller, did you converse with reference to the proposed organization prior to the time you subscribed the subscription list?

(Objected to as immaterial.)

A. I remember distinctly of having a talk with Sumner R.
1009 Clarke, and that is about all.

65. Did he or you introduce the subject?

Objected to as immaterial.

A. I think I did.

66. What was the nature of that conversation?

Objected to as incompetent and immaterial.

A. The principal thing I wanted to get at was, whether there was really an intention to build a gas works, or if it was a scheme to buy the old company out; I was assured there was nothing of that kind on; that the works were going to be built; I know I satisfied myself on that question.

67. What, if any, representations did Mr. Clarke then make to you with reference to the proposed organization for competitive purposes?

(Objected to same grounds)

A. I think the principal part of my talk with him was with reference to the genuineness of the proposition of building; I did not want to go before the council and ask for a franchise if the proposition was not going to be carried out.

68. State whether or not there was at that time any conversation between you and Mr. Clarke with reference to competition to arise from the installation of a new plant here?

Objected to same grounds as before.

A. I don't remember anything definitely.

69. Was that the only conversation you remember to have had with any of the gentlemen with whom you became associated?

A. It is the only one I remember of; I would not say I did not

talk with some of the others for probably I did; I met Mr. Miles every day several times and very likely I talked with him a little about it.

70. Prior to the time you subscribed for the capital stock which you did, did you know who were to be the subscribers for the
1010 remainder of it?

(Objected to as immaterial)

A. I think I did generally.

71. Did you also know the amounts which they severally proposed to subscribe?

Ans. Most of them.

72. Did you also at that time understand that John R. Walsh was to be a subscriber to the stock?

Objected to as incompetent and immaterial.

A. I knew he was to be largely interested in some way, either in the bonds or the stock.

73. Did you also know the extent to which Sumner R. Clarke was to become a subscriber?

A. Nothing more than he was to be the principal owner here.

74. State whether or not all of the gentlemen who signed that subscription list were able financially to pay for the stock they subscribed?

Ans. I should say they were.

75. Did you take the stock which you subscribed?

Ans. Yes sir

76. Do you know whether or not Mr. Walsh is at present a stock holder in the complainant company?

Objected to as incompetent and immaterial.

A. I think he is; that is my understanding.

77. Where did he get his stock?

(Objected to same grounds)

A. I could not answer that.

78. Have you no knowledge or information upon that question?

A. No definite information.

79. State if it is true that it was understood prior to the time the stock subscription was made, that Mr. Clarke was to appear to be a large subscriber, while, in fact, Mr. Walsh was to take that stock, and if that plan was not carried out?

Objected to same grounds as before.

A. I stated a few minutes ago I knew Mr. Walsh was to have an interest in some way, either in bonds or stock, but I knew
1011 nothing about the amount and don't know to-day what his ownership is.

80. Do you know whether or not Sumner R. Clarke took all the stock which he subscribed and whether or not he paid for it?

Objected to same grounds.

A. I don't know, but I imagine he did though.

81. Do you know, within reasonable limits, Sumner R. Clarke's financial condition at the time he subscribed the stock list in question?

A. I have no definite knowledge but he is regarded as a wealthy man; I think there is no doubt but what he is.

82. Do you know whether or not Mr. Clarke was then able to make a stock subscription of that magnitude and pay for it?

Objected to as incompetent and immaterial and calling for the opinion of the witness.

A. I should suppose he was.

83. State whether or not, from your knowledge of Mr. Clarke's financial ability, an investment of that magnitude would be a great or small one for him to make?

Objected to same grounds and calling for a conclusion.

A. I should think it would be a great one.

84. State whether or not you have ever known of his making any other investment of anything like that magnitude?

Objected to as immaterial.

The MASTER: I don't think it material, but the witness may answer subject to the objection.

A. I have no knowledge of any other unless it be an investment in real estate as large as that, although he has made some large investments in distilling property since I have known him, but nothing as large as that.

85. Or in real estate either?

A. Well, he is known to be a heavy owner of real estate,
1012 but the largest investment I ever knew him to make prior to that time in Peoria was building the Manhattan distillery.

86. How long have you known Mr. Clarke?

A. From the time I came here about 26 years ago.

87. Were you present at a meeting of the subscribers to the capital stock at the time of the organization, or to prepare for obtaining the final certificate of organization?

Ans. Yes sir.

88. What, if any, discussion was had at that time with reference to the prospect and purpose of the company?

Objected to as incompetent and immaterial.

A. I don't think there was any.

89. How many of the several subscribers were there on that occasion?

A. I think nearly all of them; I don't remember whet Chauncey Clarke was there, but I should say at least three-four of the subscribers were there.

90. What, if any, knowledge have you concerning the prepa tion of the franchise or license presented to the city council in half of your company?

A. I don't think I had very much; it was prepared by the att neys.

91. State whether or not you were consulted in any way wi reference to what it should contain?

A. I think I was; I think I read it when it was completed.

92. With whom, if any, of the stockholders or officers did y confer with reference to what should be embodied in that or nance?

A. I cannot remember any particular conversation outside of n talks with the attorneys.

93. Did you know of the presentation of the ordinance at or abo the time it was presented?

Ans. Yes sir;

94. How long was it pending, if you know?

1013 A. I don't believe I could tell but not long.

95. What, if anything, did you have to do with referen to its passage by the council?

Ans. Very little.

96. How many, if any, meetings of the city council did you a tend during its pendency?

A. I don't remember of attending but one, and that was the nig it passed the council.

97. Did you know the committee before which the ordinance w pending?

Ans. I presume I knew at the time, but could not tell now.

98. How did it happen you were present at the time the ord nance passed?

Ans. I don't think I was present when it passed but was the during the meeting; I think I left before it passed the council an learned later it had passed.

99. Do you remember of any other of the subscribers being pre ent at that time?

A. I think Mr. Miller was there and possibly Robert Clarke.

100. Was Summer R. Clarke there?

A. I don't remember but I saw him that night after it passed.

101. To what extent, within your knowledge, did Summer R Clarke participate in the passage of the ordinance, or in the discus sion which led up to its passage?

Ans. I don't know how much he did.

102. Do you know from anything Mr. Clarke said to you at an time?

Ans. No sir.

103. During the time this ordinance was pending, state whether o

not you had any conversation with any members of the council respecting it?

Ans. I think I talked with Alderman Thode.

104. Was he an alderman from your ward?

Ans. No sir.

105. Who introduced the subject, you or Mr. Thode?

A. I guess I did; it was merely in relation to a forfeit he had been talking; that there should be deposited in case the ordinance was never used; I think we talked on change once or twice about it.

1014 106. From what source did you obtain information respecting Mr. Thode's position upon that question?

A. Well, I don't know; I learned it in a general way; I am not certain whether I brought the subject up to him, or he did to me we talked about it two or three times.

107. At the time you were making arrangements to organize this company, did you know the prices charged for gas in Peoria?

A. Yes sir;

108. How long had you been familiar with those prices?

A. I have been a consumer of gas ever since I came here.

109. For how long a period of time had you known the price at which fuel gas was being furnished to consumers in Peoria?

A. I could not give the date, but I probably had known it from the time we commenced to use it, but I could not tell what it was.

110. Have you been a fuel gas consumer for some period of time?

A. Yes sir; but I could not give the date when we commenced using it; we were using it at that time though.

111. At and prior to the time of your organization what, if any, knowledge had you concerning the volume of gas consumed in Peoria?

A. Very little.

112. What, if any, knowledge had you regarding the proportion of the entire consumption used was for fuel gas purposes?

A. None at all.

113. There was a considerable difference in price between the fuel and illuminating gas, was there not?

Ans. Yes sir;

114. And had been for sometime?

Ans. Yes sir;

115. What was the price of fuel gas at that time?

A. My recollection is it was 75c. net; it might have been 85c. with 10c. off; I remember that illuminating gas was $1.35 with 10c. off if paid before the 10th, of the month.

116. That was the price at the time you were organizing your company?

Ans. That is my recollection.

1015 117. State whether or not about the time of your organization, or shortly before, you saw any estimates touching the

st of installing a complete gas plant in Peoria of the kind contemplation by your company?

(Objected to as immaterial.)

A. I didn't see any estimates.

118. State whether or not any estimates were furnished to the mpany, or any of its officers, within your knowledge?

Objected to as immaterial.

A. I presume there were but I didn't examine them.

119. At that time, what specific knowledge had you regarding e prices at which gas could profitably be furnished to consumers Peoria?

Ans. I didn't have any.

120. What official position, if any, have you held in the com- inant company?

Ans. Director.

121. Were you one of the original directors?

Ans. Yes sir;

122. Are you still a director?

Ans. Yes sir;

123. What proportion of the meetings of the directors have you ended during that time?

A. I have attended every meeting when I was in the city; I ppose two-thirds of the meetings more or less.

124. How regularly do the board of directors hold meetings?

A. I don't think we have averaged a meeting a month.

125. Is there a regular time set for the meeting of the directors?

Ans. I don't believe I can answer that question, but I think our laws must provide for regular meetings.

126. State what, if any, discussion was had at any time in the rd of directors prior to the time you were ready to furnish gas ecting the prices to be charged for it?

Objected to as incompetent and immaterial.

A. I don't think we have had an opportunity to make a price, or even discuss it; we had to follow the gait of the old company; they reduced the price before we were ready to furnish any gas, I think, and about all we had to do was to ow suit; whenever they made a price we met it.

127. Do you remember at this time about when such reductions e made and what they were?

bjected to as incompetent and immaterial.

A. My recollection is gas was down to 50 cents before we were to furnish any gas; I may be wrong, but I think the first we ished was at that figure and later it was reduced still more— 0c. net I believe.

28. For how long a period of time were the companies furnish-
gas at 50 cents and 30 cents respectively?
. I could not tell you.
29. What change was made when it was changed from 30c. per
usand?
Objected to same grounds.)
. It was changed to $1.15 net for illuminating gas and 75c. net
fuel gas.
30. Was that change made by both companies at the same time?
bjected to same grounds.
. I don't know much about what the other company did.
31. What, if anything, did you know of the proposed advance in
e prior to the time it went into effect, or was had?
bjected to as immaterial.
. Well, I know when the advance came the prices were put some
ier than any idea I had; I know I made some objection to it
my objection was overruled.
32. Was that in the board of directors?
ns. I don't think so.
33. Was that before or after the new rate had become operative?
bjected to as immaterial.
. Before.
34. You at that time knew what the advance was to be did you
not?
A. No sir; I was consulted as to what price it should be.

(The MASTER:)

35. As I understand you, you were consulted as to what price it
ld be, but your view of the matter was overruled?
. That is right to some extent.

(Mr. TICHENOR:)

36. What position did you take with respect to the rate that
t to be fixed at the time concerning which you have just tes-
i?
bjected to as incompetent and immaterial.)
e MASTER: I doubt the competency of that, but the witness
answer subject to the objection.
. My idea was 75c. for fuel gas and $1.00 for illuminating gas.
37. And did you so express yourself at that time?
ns. Yes sir.
38. Were there any others that took the same position?
bjected to as incompetent and immaterial.
. I think there were.

139. Do you remember about the time the new rate, to which you have referred, went into effect?

(Objected to as immaterial.)

A. I don't think I could give you the date.

140. How long before it became effective was this discussion to which you have just referred?

(Objected to as immaterial.)

A. Within a few weeks.

141. You have stated, as I understand you, that your position was overruled—in what manner was that accomplished?

Objected to as incompetent and immaterial.

A. Well, I will answer by saying instructions from the president, Mr. Clarke.

142. And were those instructions presented at a meeting of the board?

Ans. I don't think so; I don't remember of any board meeting.

143. Where rests the authority to fix rates for your company?

Objected to as incompetent and immaterial.

A. It seemed to rest with the officers, although it properly belongs to the board of directors, I suppose.

1018 144. How then did it happen that on this particular occasion Sumner R. Clarke dictated the prices?

Objected to as incompetent and immaterial.

A. Well, I don't think I can tell.

145. State whether or not the fixing of other prices at times of changes came before the board of directors?

Objected to same grounds.

A. I don't recollect of any directors' meeting on this question of prices.

146. Do you remember any discussion before the board of directors touching the subject of prices?

Objected to same grounds.

A. I don't remember any; undoubtedly there was though, but I cannot locate any specific talk.

147. State whether or not you and the other directors were all the time informed respecting the prices that were being made by the old company?

(Objected to as immaterial.)

A. I think we were.

148. What, if any, action did your board of directors take with reference to the various changes in prices which the old company from time to time made?

(Objected to as incompetent and immaterial.)

A. I think we followed their prices is about all.

149. What were your reasons for doing that?

Objected to same grounds.

The MASTER: I don't see the materiality of it, but the witness may answer subject to the objection.

A. We wanted to start the business and introduce the gas.

150. In what portion of the territory, covered by your company at that time, was the old company also operating in?

Objected to as immaterial.

1019 A. In very nearly all of it I should think.

151. At the time you say you knew of the proposed advance in rates by your company, did you also know that the old company proposed to make the same advance at the same time?

Objected to as immaterial.

A. I presume we had some intimation of it; we were getting tired of doing business at a loss.

152. To what extent, if at all, had that subject been considered by the two companies, or by their representatives, at that time?

Objected to as incompetent and immaterial.

A. I don't know; I never was present at any joint meeting.

153. How did you know that the old company was to advance its price at the same time your company did?

A. I didn't say I knew it; I said our company must have had some intimation of it.

154. And didn't you say you had some knowledge of it?

A. No, I used the word intimation for I had no personal knowledge of it.

155. Look at page 8 of defendant's answer filed in this case, and state whether or not the changes to which you have referred were made about the time that those notices appeared in the Peoria Press?

(Objected to as incompetent and immaterial.)

A. I think they were

156. State whether or not you saw those notices at the time they were published?

(Objected to as immaterial.)

A. Yes sir;

157. State whether they were published simultaneously in a number of the Peoria papers and side by side?

Objected to same grounds.

A. I don't recollect; the papers show for themselves if this is a copy.

020 158. You do remember seeing the two notices in the papers?
A. Yes sir.
159. And about the same time?
Ans. Yes sir;
160. State what, if any, conversation you had with any of the directors, or stockholders, either in board meetings or elsewhere, subsequently to the appearance of those notices, with respect to that.

Objected to same grounds.
The MASTER: I don't think it material to show conversations had with outside parties; the business management of a corporation under our laws is with the board of directors; I think it would be competent for you to show any discussion he had with his associates in the board. The witness may answer subject to the objection.

A. I don't remember any particular conversation.
161. Don't you remember any conversation at all upon that question?
Ans. No, I don't remember of any; very likely there were conversations but I don't remember any specific conversation.
162. State whether or not those notices were the subject of discussion in your board of directors subsequent to the time they were published?
A. No sir; I don't remember of any directors' meeting where they were discussed.
163. Have there been any changes in the price of gas since about the time of the publication of the notices concerning which you have just testified?

Objected to as incompetent and immaterial.

A. I think so. I think at the conclusion of some litigation it was necessary to charge the same price for fuel and illuminating, and it was all put at $1.00 per thousand feet.
164. What had been the price of fuel gas prior to that time?
A. 75 cents net.
165. And it had stood at that figure, had it not, since about the of August, 1900?
Ans. Yes sir;
166. And had that been the price charged by both companies?

Objected to same grounds.

. That is my understanding.
67. Under whose direction was that advance made from 75 cents ne dollar for fuel gas?

Objected to same grounds.)

In our company it must have been ordered by the president manager; I did not hear any discussion about it, but it was

erally understood there had been a judicial decision against
ging two prices and it could not be done any longer as it was.
58. What was the nature of that decision as you understood it?
bjected to as incompetent, immaterial and not the best evi-
ce.
. My understanding of it was that it had been decided it was no
er legal to charge two prices for the same product no matter
t purpose it was used for.
59. During all the time since the organization of your company
e and including the last change to which you have referred,
directed those changes?
bjected to as incompetent and immaterial.
. The manager must have directed them.
60. Did the manager do it in every case?
bjected to same grounds.
. He did it; it might have been done after consultation with the
ident.
61. State whether or not at any time the board of directors took
he subject of prices and fixed it?
bjected to same grounds.
. I have no recollection of any directors' meeting where the
s were fixed; I would not say, however, there never was a di-
rs' meeting of that kind because I missed some of the meetings.
62. During the time you have been connected with the company
state what has been your understanding of the primary
authority for fixing the price of gas?
bjected to same grounds.)
. I suppose the directors would be the primary authority; the
ers of the company have attended to it.
63. State whether or not the directors have always known of the
s which were charged by your company?
bjected to as incompetent and immaterial.
. I think they have.
64. And so far as your knowledge extends there has never been
protest on the part of the directors on the rates that have been
d?
ns. I don't think so.
65. What duties has the president performed since the organiza-
of your company?
. The usual duties of the president of a corporation.
66. What in this particular case?
. I do not know that I can answer that; I think he goes to the

office every day he is in the city and has a general oversight of the business although we have a manager.

177. Is the office of president an active one or otherwise?

A. You could hardly call it a real active office, but the president is not a figure-head by any means—he takes an interest.

178. What jurisdiction or authority has the president over the manager and especially with reference to fixing rates, so far as your knowledge extends?

(Objected to as incompetent and immaterial.)

A. The *the* authority of the president is greater than that of the general manager at all times in everything.

179. Does that hold good in your corporation at this time?

A. So far as I know it does.

180. State whether or not within your knowledge that authority has been exercised during the existence of the company?

Objected to same grounds.

A. I think it has.

1023 181. As a rule at the directors' meetings attended by yourself, has Mr. Clarke been the presiding officer?

Ans. Yes sir;

182. Has he continuously been the president of the company since its organization?

Ans. Yes sir;

183. And is now?

Ans. Yes sir;

184. How many of the directors at the present time are residents of Peoria?

Ans. 4, I believe out of 7—4 or 5—I am not sure.

185. Who are the non-resident directors?

A. John R. Walsh and L. A. Walton.

186. How long have they been directors?

A. I could not give the date of their election.

187. Do you remember the fact of Philo B. Miles resigning as a director of your company?

Ans. Yes sir;

188. Who was elected to fill the vacancy?

A. I could not tell without referring to the minutes—possibly it might have been Mr. Walton—I am not sure about that.

189. Do you remember the occasion of the resignation of Mr. O. J. Bailey?

Ans. I do.

190. Who was elected to fill that vacancy?

A. I could not say without looking at the minutes.

191. Are you able to state who filled those two vacancies without reference to the minutes, and the vacancy filled by each particular man?

Ans. No sir;

192. What non-resident directors of your company have there been since its organization other than Mr. Walsh and Mr. Walton?

A. I don't think of any.

193. Are you able to state in a general way how long those gentlemen have been members of the board?

Ans. No sir;

194. What proportion of the directors' meetings, since they became members, have they attended?

A. Very few meetings; I don't think Mr. Walsh has ever
1024 attended a meeting; Mr. Walton I think has—a very few.

195. Do you know of any special subjects that came before the board of directors on any occasion when Mr. Walton was present?

A. No sir; I may be wrong about that; Mr. Walton has been here occasionally and it is possible he never has attended a directors' meeting, but I rather think he has.

196. If he has attended any meetings would that fact be shown by your minutes?

Ans. Yes sir;

197. Since your company began to furnish gas to what extent have you been familiar with its distribution from day to day?

A. To a very small extent; I don't know much about it.

197. To what extent have you been familiar during that time with its receipts.

Ans. Not at all.

198. To what extent have you been familiar with the financial success of the company?

Ans. I don't know very much about it.

199. How much gas is your company putting out per day at the present time and how much was it putting out on August 1, 1900?

Objected to as incompetent and immaterial.

A. I could not answer that for I don't know.

200. Do you know what amount of gas your company was furnishing on the 31st, day of August 1900, as compared with the amount which the old company was then furnishing?

(Objected to same grounds.)

A. I don't know.

201. Do you know how many service pipes your company had in active use at that time and also how many the old company had in use at that time?

(Objected to same grounds.)

A. I do not.

202. Do you know what amount of gas your company was furnishing on the 31st, of August 1901, as compared with the amount the old company was then furnishing?

(Objected to same grounds.)

A. No, I do not know.

1025 203. Do you know how many service pipes your company had in active use on the date last named, and also the number of service pipes which the old company then had in active use?

A. I do not.

204. Do you know how many service pipes your company has in use at the present time and how many the old company has in use at this time?

Ans. No sir;

205. Do you know how the quantity of gas your company is now furnishing to the citizens and city of Peoria compares with the quantity the Peoria Gas Light & Coke Co., is furnishing in the same territory?

(Objected to as incompetent and immaterial.)

A. No, I don't know.

206. Do you know whether or not the Peoria Gas Light & Coke Co. at the present time is furnishing any gas to the city and citizens of Peoria?

(Objected to same grounds.)

A. I think they are; I don't know anything to the contrary.

207. To what extent, during the time you have been a director, have you been familiar with the affairs of your company—I am speaking, of course, of its business affairs?

A. I have not spent much time there and am not very familiar with it.

208. State if it is not true, within your knowledge, that for several months last past the Peoria Gas Light & Coke Co., has not furnished a foot of gas to the city or citizens of Peoria?

Objected to as incompetent and immaterial.

A. I don't know whether it has or not.

209. State if you don't know that the fires have not been lit in the old company's plant, for a number of weeks or months last past?

Objected to same grounds.

A. I don't know.

210. Do you not know it from your official connection with the complainant company?

Ans. No sir;

1026 211. How frequently do you pass the old company's plant?

Objected to as incompetent and immaterial.

A. Once, twice or three times in as many years.

212. State if you are not at the present time an officer in a railroad which passes over a portion of the premises of the old Peoria Gas Light & Coke Co.,?

Ans. Yes sir;

213. And is it not also true that you frequently pass over that railroad?

Ans. I don't think I have been over that road for a year.

214. How far is the old gas company's plant from your place of business?

Ans. $\frac{3}{4}$ of a mile or possibly a mile.

215. You are well acquainted with the locality?

Ans. Yes sir;

216. At the time you had in contemplation the installation of a new gas plant how large a plant with reference to the demands of the city of Peoria, was considered?

A. Large enough to supply the entire demand.

217. Do you know whether or not the plant has sufficient capacity at the present time to supply the entire demand?

A. I think it has, if not, we can arrange it pretty quick.

218. Are you acquainted with the capacity of the different portions of the plant of the complainant company?

Ans. No sir;

219. Have you ever known those capacities or any of them?

A. No sir; I know nothing whatever about the manufacture of gas.

220. During the period of the construction of your company's plant, to what extent were the investments in the progress of the work presented from time to time to the board of directors?

A. Only in a general way—the amount of expenditures etc.,

221. By whom were those presented?

A. By the manager when presented at all.

222. That was Mr. Little was it?

Ans. Yes sir; he has been the manager from the start; there has been no changes in the organization except these changes in the board of directors.

1027 223. From month to month, or otherwise, were any financial statements presented by Mr. Little to the board of directors during the period covered by your construction?

A. I think he kept the directors advised of the expenditures and the work that was going on.

224. I mean formal statements in writing showing disbursements etc., did he present such statements from time to time?

A. Oh, yes.

225. And that continued, did it, until the plant was completed?

A. Yes sir;

226. Since that time has he also continued to present financial statements in writing?

A. I don't think so; I have not seen one for sometime, but possibly he may when I was not there.

227. Do you know whether there is any requirement of that kind by the board?

Ans. No, I do not.

228. Has the board as such, or any committee of it, ever au
the accounts from time to time as the work progressed or since
A. No sir;
229. Has there ever, within your knowledge, been an aud
committee, or any committee appointed for the purpose of exa
ing and passing upon the accounts presented by the manager?
A. I don't recollect of any still I could not say there had
been.
230. If there had been anything of that kind would that
matter of record also?
Ans. Yes sir;
231. State whether or not from month to month since your
pany began to furnish gas, your manager, or any other person
furnished to the directory statements showing the output?
A. I don't think he has.
232. State whether or not any information upon that q
1028 tion has come before the board officially or otherwise, or
been considered in any manner by the board?
A. Not at any meeting where I was present.
233. Have you as a director or as a stockholder during any
tion of that time had any knowledge of the output?
A. I don't think I have; it is my own fault I have not.
234. Have you no knowledge at the present time of the d
output of your company's plant?
A. No sir; I have not but it is all my own fault for I can g
the books and find out anything I want to.
235. What has been the character of the business under
cussion at the directors' meetings?

Objected to as incompetent and immaterial.

A. Would not that be a proper question to ask of the secretar
someone who has the records?
236. I would like to have you answer it if you can?
A. I don't believe I can; our meetings have been very sh
most everybody being in a hurry that attended them; I cannot
call any particular thing at those meetings that was discussed.
237. Do you know whether or not Mr. Walsh had been interes
in the old company, or was interested in it at the time of the in
guration of the plant for the organization of the new company?

Objected to as incompetent and immaterial.

A. I have no direct knowledge of any interest he had.
238. Have you any knowledge from anything Mr. Walsh s
to you?
A. No sir;
239. To the best of your knowledge then, is this the first of M
Walsh's ventures in the gas business in Peoria?
A. It is to the best of my knowledge; I heard some rumors
some stock purchases but I knew nothing about it.

240. When did you hear at ; rumers of that kind?

Objected to as incompetent and immaterial.

1029 A. I could not tell you when.

241. When with reference to the time of the organizatio of your company?

A. I could not answer that, but it was, of course, since then.

242. That the purchases were since or you heard it since?

A. Well, I heard it since; all I heard was merely rumor, and don't know that it was bought by him either.

243. Do you know of any purchases of stock in the old compan made by Mr. Walsh since the organization of the complainant com pany?

Objected to as incompetent and immaterial.

A. No, I don't know of any.

244. Do you know of any purchases of stock in that company i his interest?

(Objected to same grounds.)

A. I have no knowledge of any.

245. Do you know who, at the present time, are the holders o the stock of the old company?

Ans. No sir;

246. Do you know whether that stock is owned in Peoria or out side?

(Objected to same grounds as before.)

A. I don't know.

247. What knowledge have you, if any, respecting the dividends which the old company has made since the commencement o operations by your company, as compared with its earnings before

Objected to same grounds.

A. I have no knowledge of either its present dividends or before

248. Look at Exhibit "19" now shown you and state whether o not that bears your genuine signature?

Ans. Yes, I signed this.

249. Who presented it to you for your signature?

A. I don't remember.

250. How long before you signed it did you know that such a paper was to be prepared for presentation to the city council?

A. I probably knew it when I signed it; I don't think I 1030 knew it before.

251. Do you know who prepared it, or had its preparation in charge?

Ans. No, I do not even remember who brought this to me to sign —possibly it was Mr. Miller; he did most of the work of this kind

252. Did you know for what purpose the paper was to be used at the time you signed it?

A. I knew it was to be presented to the council.

253. Did you know what object the signers had in preparing it and presenting it to the city council?

A. I supposed the primary object was to assist the passage of the ordinance; it could not have been any other.

254. At the time you signed that paper, did you believe the statements it contained were true?

A. Yes sir; or else I would not have signed it.

255. Did you also believe that the company, if the license were granted, would carry out in good faith the statements and representations contained in that paper?

Ans. I did.

256. From a financial standpoint, did you believe the company would be able to carry out the statements and representations contained in that paper?

A. Yes sir; I had taken pains to be certain of that; I knew they was plenty of money to use and I had been assured a works would be built; I did not want to be a party to any application of this kind to the city council that was not genuine.

257. And did you also know at the time that paper was signed that its statements and representations could be carried out and still enable the company to make a profit on the investment?

Objected to as incompetent and immaterial.

A. Well, I thought so.

258. You believed that to be the fact, did you?

Ans. Yes sir.

Adjourned by agreement until Tuesday, March 11, 1902, at 10 a. m.

1031 United States court room, Government building.

PEORIA, ILL., TUESDAY, *March* 11, 1902—10 o'clock a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner; Mr. E. C. Ritcher and Mr. W. T. Abbott, appearing for complainant; Mr. Henry Mansfield, and Mr. F. H. Tichenor, appearing for the defendant.

OLIVER J. BAILEY, called on behalf of the defendant, being first duly sworn according to law, deposes and says.

Direct interrogatories by Mr. MANSFIELD:

1. Please state your name and residence?

A. Oliver J. Bailey, Peoria, Illinois.

2. In what business are you engaged?

A. I am a lawyer by profession and I am interested in two banks of this city—I am president of the Central national bank and vice president of the Dime savings bank.

3. How long have you been president of the Central national bank?

Ans. Since the death of Mr. Lightner—some 3 or 4 years.

4. How long have you been connected with the Dime savings bank as an officer?

Ans. Since its organization 15 years ago.

5. You are also a partner in the firm of Bourland & Bailey of this city, are you not?

Ans. I am.

6. Does that firm carry on a real estate and loan business?

A. Yes sir; it does principally a loan brokerage business.

7. You are also interested, to quite a large extent, in real estate in and around the city of Peoria, are you not?

A. I own some real estate.

8. Are you the same O. J. Bailey whose name is attached to the subscription list for stock of the Peoria Gas & Electric Company?

A. I am.

9. Were you acquainted with the various gentlemen, whose
1652 names appear upon the subscription list previous to the time they subscribed to the stock of complainant company?

A. I had known most of them well for a number of years.

10. How long had you known Sumner R. Clarke, Ben. Warren, Jr., and Geo. H. Littlewood?

A. I had known Mr. Clarke probably 10 or 12 years; had known Mr. Warren longer than that; I have known Mr. Littlewood since he has resided in this city, I believe.

11. Previous to the time you became a subscriber to the capital stock of the complainant company, did you have any conversation with any of the gentlemen, who afterwards became stockholders, relative to becoming stockholders in complainant company?

Ans. I did.

12. With whom did you have those conversations?

Objected to as incompetent and immaterial.

A. Principally with Sumner R. Clarke.

13. What was the nature of the conversation you had with him?

Objected to same grounds.

A. Simply with reference to the advantages and advisability of new gas company in Peoria.

14. Did you know anything about the cost of the manufacture of gas at the time you had these conversations with Mr. Clarke?

Objected to same grounds.

A. I know something of the process of the manufacture of gas, but as to the cost of it I knew practically nothing.

15. In the course of these conversations you had with Mr. Clarke was anything said concerning the cost at which gas could be produced, or manufactured in the city of Peoria?

Objected to same grounds.

A. Not definitely, only dealing in generalities.

16. Was anything said at the time as to whether the new company would make a reduction in the price at which gas was furnished to consumers in the city of Peoria?

(Objected to same grounds.)

1033 A. It was claimed that gas could be manufactured at a reasonable profit and furnished at a less price than was then being charged for gas.

17. Do you remember the prices then being charged for gas by the Peoria Gas Light & Coke Company?

A. I don't know with certainty whether I remember the prices that were being charged at that time or not; I think I remember substantially the prices.

18. What were those prices to the best of your recollection?

Objected to same grounds as before.

A. I believe it was $1.35 for illuminating gas and a $1.00 for fuel gas with a discount on each price of 10c. per thousand if paid before the 10th, of the month. That is my best recollection but I am not certain.

19. Were you acquainted with the stockholders of the Peoria Gas Light & Coke Co., at that time?

A. I was acquainted with some of them.

20. Who were the gentlemen you knew that were stockholders in that company?

(Objected to as immaterial.)

A. Mr. Henebery, Mr. Coffey—I knew better perhaps of Mrs. Bradley and her interest by virtue of my connection with the Bradley Institute.

21. Did you know of any stockholder of the Peoria Gas Light & Coke Co., who was a non-resident of the city of Peoria?

Objected to as incompetent and immaterial.

A. No sir; I did not at that time so far as I know.

22. Did you at any time subsequent to the signing of the stock subscription list of the complainant company?

A. No not in any personal way.

23. In what business was Sumner R. Clarke engaged at the time you had these conversations with him relative to the organization of the Peoria Gas & Electric Co.?

(Objected to same grounds.)

1034 A. I knew him as a distiller and a farmer.

24. What was his financial reputation in the city of Peoria at that time?

(Objected to same grounds.)

A. I believe his reputation was that of a man of large means.

25. Look at the stock subscription list before you and state whether or not you believed from general reputation that the men who subscribed to that stock were at that time capable of paying for the amount of stock for which they subscribed?

Objected to as incompetent, immaterial and calling for the opinion of the witness.

A. I should so regard them.

26. Would you consider the amount of stock subscribed for by Sumner R. Clarke a large or a small investment for a man of his reputed wealth?

(Objected to same grounds as before.)

The MASTER: I don't see the materiality of it but the witness may answer subject to the objection.

A. I think I should regard it as a large investment; I should, however, have believed Mr. Clarke entirely competent to carry such an investment if he had undertaken to do so.

27. Did Mr. Clarke, at the time he had these conversations with you relative to your becoming a subscriber to the capital stock of complainant company, impress you with the idea that he had any knowledge concerning the cost of the manufacture of gas in cities of the size of Peoria?

(Objected to same grounds.)

The MASTER: State what he said on that subject, if anything?

A. He did impress me with the fact that he had personally given the matter considerable thought—he so stated to me.

28. What, if anything, did he say to you relative to the cost of the manufacture of gas in cities of the size of Peoria?

Objected to same grounds.

1035 A. I don't think there was any definite figures given; our conversations were always of a general character as to gas stock being a good investment.

29. What, if anything, did he say to you relative to the purpose of the organization of the Peoria Gas & Electric Company?

Objected to same grounds.

A. Well, he said that the purpose primarily was a good financial investment, and secondly, to give to the citizens of Peoria the benefit of a company of more enterprise, general affability in its methods of dealing with the people.

30. Did he say anything in the course of those conversations relative to what would be the conduct of the complainant company with the Peoria Gas Light & Coke Company?

Objected to same grounds.

A. Nothing except it would be a legitimate competitor of that company.

31. Did you have any conversation with any of the other proposed stockholders of the complainant company previous to signing the subscription list of that company?

Objected to same grounds.

A. I think not individually; I have had such conversations collectively before the subscription was signed.

(The MASTER:)

32. Do you mean with parties who afterwards became subscribers? Ans. Yes sir;

(Mr. MANSFIELD:)

33. Where were those conversations had?

Objected to same grounds.

A. My recollection is the first conversation was had in Mr. Irwin's office.

34. Who were present at the time this conversation was had?

Objected to same grounds.

A. I think, Mr. F. T. Corning, Mr. Geo. H. Littlewood, Mr. Benj. Warren, Jr., Mr. Philo B. Miles, Mr. Theo. J. Miller and Mr. Sumner R. Clarke.

1036 35. What was the nature of the conversation held in that office at that time?

(Objected to same grounds.)

A. As to the advisability of organizing a gas & electric company and as to the best methods of procedure to accomplish that end

36. Was it a general discussion, or was it carried on by one individual with the other gentlemen there present?

Objected to same grounds.

A. My recollection is at this time that the discussion was generally engaged in by most of the persons present.

37. What was the nature of the remarks made as to the advisability of forming such a company at that time and who were they made by, if you remember?

(Objected to same grounds.)

A. I remember that the sentiment of that gathering was in favor of the necessity, from a public view, of such an organization; I be-

lieve those views were expressed, as I remember it, by Mr. Miles, Mr. Warren, Mr. Clarke and Mr. Miller.

38. Why was it deemed necessary from a public standpoint that such a company should be organized?

(Objected to same grounds.)

A. Because of the illiberal disposition manifested on the part of the Peoria Gas Light & Coke Company in the matter of the extension of mains and in the matter of general public service as well I think as to prices charged for gas.

39. To what extent was the conversation directed towards the price of gas then charged by the Peoria Gas Light & Coke Company?

Objected to same grounds.

A. I cannot say beyond the general expression that gas could be furnished at a reasonable profit and at the same time for less money than we were paying for it here.

40. What conversation was had there relative to the unfavorable disposition of the Peoria Gas Light & Coke Co., to treat the consumers of gas fairly and courteously?

(Objected to same grounds.)

1037 A. I am not able to state from recollection the definite conversation indulged in on the part of anyone there.

41. Do you know of your own knowledge of any unfavorable disposition on the part of the Peoria Gas Light & Coke Co., to treat its patrons unfairly or discourteously?

(Objected to same grounds.)

A. Not beyond my own experience.

42. Do you know the territory that was proposed to be covered by the pipes of the Peoples' Gas & Electric Co., at the time of the organization of that company?

(Objected to same grounds.)

A. No sir; not with certainty; I know it was said that a certain interior territory would be first piped, and the expectation was to cover the entire city and territory covered by the old company.

43. Are the pipes laid in the streets of the city of Peoria by the complainant company co-extensive with the pipes that were laid and owned by the Peoria Gas Light & Coke Company?

Objected to same grounds.

A. Substantially so in the central part of the city.

44. Did you have any conversation with any other of the proposed stockholders in complainant company, or with any person, relative to the organization of said company, other than with Sumner R. Clarke?

(Objected to same grounds.)

A. I did yes sir;

45. With whom did you have those conversations?

Objected to same grounds.

A. With Mr. Miller, Mr. Littlewood and Mr. Little.

46. At the time you had the conversation with Mr. Little, what, if anything, did he say about his knowledge of the cost of the manufacture of gas in cities of the size of Peoria?

Objected to same grounds.

A. In substance that gas was being furnished at a price in cities the size of Peoria at less money than was being charged for it here.

1038 47. Was there any margin placed upon the price at which gas could be furnished at a profit in cities of the size of Peoria by Mr. Little?

(Objected to same grounds.)

A. Not that I remember of.

48. Did you have this conversation with Mr. Little previous to signing the stock subscription list of complainant company?

Objected to same grounds.

A. I did, at least, I so remember it.

49. Was there any limit placed upon the price at which gas could be manufactured and sold at a profit in the city of Peoria by Mr. Little during any of these conversations which you had with him?

Objected to same grounds.

A. No sir; I think not prior to the subscription for the stock.

50. Is it not a fact that gas used for fuel purposes was being sold in Peoria at that time for 75c. per thousand feet?

Objected to same grounds.

A. I think not at the time of the inception of this organization, but I would not want to dispute the record if it shows that I am simply stating my recollection and I was paying pretty large gas bills for the institutions I was connected with.

51. These conversations you had with Mr. Little at the time in question related to the price that gas was selling for in the city of Peoria at that time, did it not?

(Objected to same grounds.)

A. I think our conversation related to the price of gas and the general management and disposition of companies and the furtherance of public enterprise and public good.

52. Did those conversations which you had with Mr. Little at that time with regard to the price at which gas was being furnished

in the city of Peoria relate to the price of gas being furnished at that time?

(Objected to same grounds.)

A. I think so, as I understood the price at that time.

1039 53. This Mr. Little, with whom you had these conversations, is Francis W. Little now the manager of complainant company?

A. It is the same who is now manager of the company; I would not have remembered his initials.

54. Was Mr. Little present at the meeting that was held, as you have stated, in Mr. Irwin's office for the purpose of organizing the complainant company?

(Objected to same grounds.)

A. He was not.

55. At the time that meeting was held were any arguments advanced which were to be presented to the people for the purpose of obtaining the majority frontage required to obtain a franchise or license from the city of Peoria?

Objected to as incompetent, irrelevant and immaterial.

A. Not so far as I remember at this time.

56. Did you have any conversation with Theo. J. Miller relative to the obtaining of the majority of foot frontage for the purpose of obtaining a franchise or license from the city of Peoria?

Objected to same grounds as last before mentioned.

A. I remember of no personal conversation of that character.

57. Did you at the time of the meeting held in Mr. Irwin's office, know whether or not the stock subscribed by the various people, whose names appear upon the subscription list, was to be taken by them for themselves personally, or for some other person or persons?

(Objected to as incompetent and immaterial.)

A. So far as I knew at that time the stock subscribed, or to be subscribed by these individual persons, was an individual investment to be held by them.

58. What, if any, steps did you take towards obtaining a franchise or license for the complainant company to use the streets of the city of Peoria?

(Objected to same grounds.)

A. Personally I did not take any steps.

1040 59. Were you advised with as to what the contents of the ordinance, which was to be passed by the city of Peoria, should contain?

Objected to same grounds.

A. I think the preparation of the ordinance which the coun was subsequently asked to grant, was submitted to me before it w presented to the council and some changes therein were suggest by me but just what they were I do not remember at this time.

60. Were those changes acquiesced in by the men who were i terested in that company at that time?

(Objected to same grounds.)

A. I think they were.

61. Do you know the general terms of the changes that we recommended by you at that time?

(Objected to same grounds.)

A. No sir; I do not; I have not read the ordinance since the and I do not remember.

62. Were you a director of the Peoples' Gas & Electric Co., at an time?

Ans. I believe I was for a little time.

63. Did you attend the meetings of the board of directors whic were held during the time you were such director?

Objected to as incompetent and immaterial.

A. I believe I did.

64. What, if any, action was taken by the coard of directors rela tive to the prices that should be charged for gas during your term as a director?

(Objected to same grounds.)

A. Not any that I am aware of while I was such director.

65. When were you elected a director of this company?

A. At the time of the election of its first board, I think.

66. How long did you continue to be a director of that company?

A. I don't remember certainly; I think until about the close of the first meeting of the board.

67. Who was elected to fill your place, if you know?

Objected to as immaterial.

1041 A. I don't remember certainly, but I think Mr. Little.

68. What, if any, stock assessment was made by the board of directors during the time you were a director of that company?

Objected to as immaterial.

A. I believe an assessment of 20% was made on the stock while I was a director.

69. Has any other stock assessment been made to your knowledge since that time?

(Objected to as immaterial.)

A. Not so far as I am aware.

70. You are still a stockholder in co mplainant company, are you not?

(Objected to as immaterial.)

A. I am.

71. And as such stockholder you have received no notice of any stock assessment made by your company since that time?

Objected to as immaterial.

A. Not so far as I remember.

72. State whether or not at any meeting of the board of directors attended by you there was any action or conversation had relative to the prices which should be charged consumers of gas in the city of Peoria?

(Objected to as incompetent and immaterial.)

A. I attended a meeting—largely attended, I think, by the stockholders as represented by this list in Exhibit "18," at which the question of the price which should be charged for gas to consumers in the city of Peoria was discussed.

73. Do you remember what that discussion consisted of and what, if any, determination was had on account of that discussion relative to the price that should be charged consumers of gas in the city of Peoria?

(Objected to same grounds.)

A. I don't remember the definite discussion or conversation had at that time; it was not a meeting, as I remember it, at which the question could be determined; our action there was simply advisory from the standpoint of the Peoria stockholders.

1042 74. Who was present at that meeting?

(Objected to same grounds.)

A. I am not able to remember all the persons present, but this list of stockholders appearing in Exhibit "18" was largely represented.

75. What, if any, price was decided upon by the Peoria stockholders, as a fair and reasonable price to be charged consumers of gas in the city of Peoria?

(Objected to same grounds.)

A. The price contended for by a majority of the Peoria stockholders represented at that meeting was one dollar for both fuel and illuminating gas with the usual discount of 10c., as I remember it. That was my argument.

76. Was Sumner R. Clarke present at that meeting?

Objected to as immaterial.

A. He was.

77. Was Ben Warren, Jr., and Geo. H. Littlewood present?

Objected to as immaterial.

A. I think Mr. Warren was present; I am not certain as to Littlewood; I think, however, he was present.

78. Did you personally know at that time whether or not Sum R. Clarke was the owner of the stock subscribed by him to Peoria Gas & Electric Co.?

(Objected to as immaterial and irrelevant.)

A. I had reason at that time to believe he was not the owner all the stock subscribed for by him.

79. Did you know who was the owner of that stock?

Objected to same grounds as before.

A. Not from any personal knowledge; I had my own convictio

80. Was this conversation that was had by the Peoria stockho ers relative to the price they thought should be charged for gas the city of Peoria had at a time previous or subsequent to the co mencement of the furnishing of gas by complainant company to t city and citizens of Peoria?

(Objected to same grounds.)

1043 A. My recol-ection is it was had prior to the time of t commencement of the furnishing of gas, but it may not ha been; it was at the first meeting at which a definite price had be discussed at which I was present.

81. You say you ceased to be a director of this company at th first meeting of the board of directors after its organization? Wa that first meeting held previous, or subsequent to the constructio and completion of complainant's plant in the city of Peoria?

Objected to as immaterial.

A. It was held prior to the completion of the work.

82. It was before then it commenced to furnish any gas to the cit zens of Peoria?

(Objected to as immaterial.)

A. Yes sir.

83. At what price, if you know, was gas furnished to consumer in the city of Peoria immediately after the completion of the con struction of the plant of complainant company?

Objected to as irrelevant and immaterial.

A. I could not say; the price changed so rapidly I could not keep track of it.

84. The prices then varied at that time, did they?

Objected to same grounds.

A. I think they did.

85. What was the lowest price, if you know, for which gas was sold per thousand cubic feet in the city of Peoria by complainant company?

(Objected to same grounds.)

A. I don't believe I remember the lowest price that was reached.

86. Did you have any conversation with Theo. J. Miller relative to the arguments he should use in endeavoring to obtain the signatures to the foot frontage for the purpose of obtaining the franchise or license from the city of Peoria to lay the pipes of complainant company in its streets?

1044 Objected to as incompetent and immaterial.

A. Not that I remember.

87. Did you at that time as a stockholder or director know of the arguments that were being used by Mr. Miller in endeavoring to obtain that front footage?

Objected to as immaterial, incompetent and irrelevant.

A. No sir; I don't know that I did then or do now.

88. Did you at any time during the pendency of the franchise or license before the city council of the city of Peoria, have any conversation with any of the aldermen relative to the passage of that franchise or license?

(Objected to same grounds.)

A. I never sought any such conversation and I am not aware that I ever had such a conversation.

89. Did you at any time during the pendency of that ordinance appear before any committee of the city council for the purpose of advancing any argument, or reason, why such ordinance or franchise should be recommended by the committee for passage?

A. I never did.

90. Were you one of the parties who originated the idea of the organization of the Peoples' Gas & Electric Company?

Objected to as immaterial.

A. No not other than as much as I have testified to.

91. What person, if you know, first called to your attention the idea of the organization of such a company?

Objected to as immaterial.

A. I think Sumner R. Clarke was the first person to mention the matter to me.

92. Then was it upon the solicitation of Sumner R. Clarke that you became a subscriber to the capital stock of complainant company?

Objected to as immaterial and incompetent.

A. I could not say it was upon his solicitation; I think i
1045 was upon my own judgment later that I became a subscribe to the stock.

93. Upon what did you base your judgment?

Objected to same grounds also as irrelevant.

A. Upon the general discussion that had been had as to th benefits which would be derived to the city through such a organization.

94. Was it merely the benefits that would be derived by the citizens generally that led you to become a stockholder in this company?

(Objected to same grounds.)

A. I believe I may say that is literally true, otherwise I should have sought a much larger stock holding than my subscription indicates.

95. In arriving at that judgment you did not take into consideration any of the facts or circumstances surrounding the Peoria Gas Light & Coke Co., and its payment of dividends, did you?

Objected to as incompetent and immaterial.

A. In a general way I think those things entered into my conclusion from the very standpoint I have suggested.

96. Was it or was it not in your judgment considered a good investment at that time for yourself personally?

Objected to same grounds.

A. I had no reason at that time to believe it would prove otherwise than a good investment from a selfish standpoint.

97. Did you take into consideration the fact that there was another gas company doing business in the city of Peoria at the time?

Objected to same grounds.

A. Yes sir; I did, and perhaps was personally instrumental in having a definite pledge that under no circumstances should the new organization dispose of its interests to the management of the old company.

98. At the time you became a stockholder of complainant
1046 company did you know the amount of gas that was consumed daily in the city of Peoria?

(Objected to as immaterial and irrelevant.)

A. No sir; I did not.

99. Did you have any idea as to the amount of gas so consumed?

A. No, I think not.

100. Do you know what the size and character of the plant of the

complainant company is, and its capability to furnish all the gas that is consumed in the city of Peoria at the present time?

Objected to as immaterial and irrelevant.

A. No sir; I never have gone into those details.

101. Was the plant built and constructed for the purpose of furnishing all the gas that might be consumed in the city of Peoria or otherwise?

(Objected to same grounds.)

A. It was certainly started with the idea of a plant that should be capable of supplying the entire city and its future growth.

102. I believe you said you were acquainted with William A. Herron one of the stockholders of the Peoria Gas Light & Coke Co., What is Mr. Herron's business?

A. You are mistaken in saying I said I was acquainted with Mr. Herron; I am however acquainted with him and know him well.

103. You know Mr. Herron to have been a stockholder in the Peoria Gas Light & Coke Co., do you?

(Objected to same grounds.)

A. I believe, now you mention it, I have known the fact that Mr. Herron was a stockholder.

104. How long had you known that Mr. Herron had been a stockholder in the old company at the time you became a subscriber to the stock of the complainant company?

(Objected to same grounds.)

A. I cannot say; I never knew him as being active in the affairs of that company; I think I had known the fact that he was a stockholder in that company for some years, that is, I had heard it said he held stock of that company.

1017 105. What business is Mr. Herron engaged in in the city of Peoria?

(Objected to as immaterial and irrelevant.)

A. He is president of the Peoria savings bank; I have known him as the head of that institution for 25 years or more.

106. Mathew Henebery was another stockholder in the Peoria Gas Light & Coke Co., was he not?

(Objected to same grounds.)

A. He was.

107. What business was Mr. Henebery engaged in at the time you became a stockholder of complainant company?

Objected to same grounds.

A. I am not aware of any business Mr. Henebery was in except his connection with the gas company and with the First national bank.

108. He was and had been a wholesale liquor dealer in the city of Peoria for a number of years?

A. Perhaps he had; I was not aware as to that.

109. How long was he connected with the First National Bank of Peoria, if you know?

(Objected to same grounds.)

A. I don't know, but I think I had known him in that connection for 10 or 12 years.

110. Were you acquainted with the late Peter Coffey?

Ans. I was.

111. What business was he engaged in at the time you became a stockholder in complainant company?

(Objected to same grounds.)

A. I was not aware of any business Mr. Coffey had outside of the gas company with which he was connected.

112. Were you acquainted with Leslie Robison at that time?

A. Yes sir;

113. In what business was he engaged?

Ans. Brewery business.

114. How long had he been engaged in that business to your knowledge?

(Objected to same grounds as before.)

A. I could not say; I had known him in connection with that business for 10 years or more.

1048 115. Do you know whether or not Leslie Robison was a stockholder in the Peoria Gas Light & Coke Co.,?

(Objected to same grounds.)

A. I don't know, I never knew him to be a stockholder in that company.

116. What was the financial reputation in the city of Peoria of the gentlemen you have just been interrogated about?

Objected to as immaterial and irrelevant.

A. I think it was such as to give general public confidence that any check which either of them might draw would be likely to be honored.

117. At the time you became a subscriber to the stock of the complainant company in the city of Peoria, there was another company in the city furnishing gas to its citizens, was there not?

Objected to same grounds.

A. There was.

118. And amongst the men who were stockholders in that company were Mr. Herron, Mr. Henebery, Mr. Robison and Peter Coffey?

Objected to same grounds.

A. I remember distinctly that Mr. Henebery and Mr. Coffey were and I believe the others were.

119. Look at the paper now shown you marked Exhibit "19" and state whether or not that is your genuine signature?

A. I cannot deny it; it is.

120. For what purpose did you sign that paper?

Objected to as immaterial and irrelevant.

A. For the purpose set forth in the paper itself.

121. Did you know at the time you signed that paper that there was an ordinance pending before the city council of the city of Peoria asking for a franchise or license for the Peoples' Gas & Electric Company to use the streets in the city of Peoria?

Objected to same grounds.

A. I knew one of that character was either pending or
1049 was to be presented.

122. Did you at the time you signed that paper believe that the statements therein contained were true?

Objected to as incompetent and immaterial.

A. I certainly did or I would not have signed it.

123. Did you believe at the time that the company would carry out the representations contained in that paper?

Objected to same grounds.

A. I most certainly did.

124. And that the company was capable of carrying out those representations?

(Objected to same grounds.)

A. Yes sir;

And further the witness saith not.

PHILO B. MILES, called on behalf of the defendant, being first duly sworn according to law, deposes and says.

Direct interrogatories by Mr. TICHENOR:

1. State your name and residence?

A. Philo B. Miles; Peoria, Illinois.

2. What is your occupation?

Ans. Grain & commission merchant.

3. How long have you resided in Peoria?

A. Nearly 32 years, I think.

4. How long have you been engaged in the grain and commission business?

Ans. Something over 25 years.

5. All of that time in Peoria?

Ans. Yes sir;

6. What is the name of your present firm and how long has that been its name?

A. The firm name is P. B. & C. C. Miles, and it has stood in that name about 25 years.

1050 7. In what other lines of business, if any, have you been engaged during the time you have been in the commission business in Peoria?

Ans. I have been in the wholesale coal business.

8. You were mayor of the city of Peoria at one time for one term, were you not?

Ans. Yes sir; I was mayor from the spring of 1893, to the spring of 1895.

9. You are a stockholder in complainant company, are you not?

A. Yes sir; and have been since its organization.

10. State whether or not prior to the time you became interested in the complainant company you had been a stockholder, or interested party, in any gas company?

Ans. No sir; not before that.

11. You were never in any way associated with the Peoria Gas Light & Coke Co., were you?

Ans. No sir;

12. How long prior to the organization, which was perfected in the month of May 1899, did you take up the question of becoming interested in complainant company in the event it should be organized?

Objected to as immaterial and irrelevant.

A. I don't remember; it seems to me it was sometime the year before—sometime along in the spring or summer of the year before, although I am not certain; it was some little time before the ordinance was passed.

13. Do you remember at this time in what way the subject was brought to your attention and by whom?

Objected to same grounds as before.

A. Yes sir; the subject was brought to my attention by Mr. Sumner R. Clarke.

14. How long have you been acquainted with Mr. Clarke?

A. Nearly all the time I have been in Peoria—for 30 years I should say.

15. What transpired on the occasion of his meeting you first with reference to this subject matter?

Objected to as immaterial and irrelevant.

1051 A. Mr. Clarke said they were going to start a new gas company and wanted I should take some stock in it and on his recommendation I did so.

16. What, if any, reasons did he then give why he thought it would be advantageous for you to become a stockholder?

Objected to as incompetent and immaterial.

A. As I remember it, he thought a new gas company here would be a fairly good paying business, and in view of that fact, he thought it would be a good idea to take a little stock.

17. Prior to that time what, if any, business interests had you had in common with Mr. Sumner R. Clarke?

Objected to as immaterial and irrelevant.

A. No business of any particular nature except the business we have often done with him on the board of trade in selling him grain and buying spirits of him.

18. You were never associated with him before in any transaction?

Ans. No sir;

19. What, if any, representations did he then make to you with respect to the probable profit which a competing company in Peoria might make?

(Objected to as incompetent and immaterial.)

A. I don't think he made any; he simply said he thought it was a good investment and would be all right.

20. State whether or not at that time he outlined to you the scope of operation of the proposed company?

Objected to same grounds.

A. No sir; he did not.

21. State whether or not as you then understood it, the proposed new company was going into the field for the purpose of competing with the old company then operating here?

Objected to same grounds.

A. As a matter of fact the new company, as I understood it, would compete with the old.

1052 22. What portion of the city of Peoria and its suburbs, within your knowledge, was covered by the operations of the old company at that time?

(Objected to as immaterial and irrelevant.)

A. My impression is most of the valuable territory was pretty well covered by the old company.

23. How far from your place of business was the plant of the Peoria Gas Light & Coke Co.?

Ans. About half a mile I should say.

24. To what extent during your residence in Peoria had you been familiar with its operations or the magnitude of its business, its extensions, its process of making gas and other kindred questions?

Objected to same grounds.

A. I knew as a matter of fact very little about the extent of business; about all I knew was the price of gas; I was pre familiar with the price of gas, that is, I knew when it was less th it had been.

25. Had you usually been familiar with the price from the ti you came to Peoria up to the time of the proposed organization?

Objected to same grounds.

A. No, I think not as a general thing, not from the time I ca to Peoria; we had been a consumer of gass at our office from t time we started in business here more or less, that was 25 years ag but as a consumer in my home probably not over 15 years.

26. During that period you had known the prices charged by t old company for gas in Peoria, had you not?

A. Well, I could not say exactly that I knew.

27. I mean at the time you knew what the prices were?

A. Yes, I paid the bills.

28. You were acquainted, were you not, with the principal me interested in the old company and had known them for a gre many years?

(Objected to same grounds as before.)

A. Yes sir;

29. State whether or not you also knew their financia
1053 standing in Peoria?

(Objected to same grounds.)

A. Yes sir;

30. State whether or not you knew also the financial standing o the Peoria Gas Light & Coke Company during the period covere by your residence here?

(Objected to same grounds.)

A. Yes sir;

31. What was the financial standing of those persons and of tha corporation during the time you have known them and it?

Objected to as incompetent and immaterial.

A. Good.

32. State whether or not those gentlemen were men of large o small means during that time?

(Objected to same grounds.)

A. Large means, the most of them, as I understood it.

33. Within your knowledge at the time the subject of organizing this new company was called to your attention, what was the capacity of the old company as compared with the demand for gas in Peoria and adjacent territory?

(Objected to same grounds.)

A. I could not answer that from my own knowledge.

34. State to what extent you became familiar with the operations and expansion of the old company during the time you were mayor of the city, if at all?

(Objected to same grounds.)

A. Well, I might say the old company were extending its mains.

35. State whether or not that has been the fact during the period covered by your residence in Peoria?

Objected to same grounds.

A. During the early period of my residence here I did not pay very much attention to it; during the latter period of my residence here—for the last 12 or 15 years—I should say that was a fact.

36. During the early stages of the preparations for the organization of complainant company, what knowledge had you of the quantity of gas consumed in Peoria, either per day, month or year?

Objected to as immaterial and irrelevant.

1054 A. I had no knowledge of the quantity or anything of that kind.

37. State whether or not you knew at that particular time the prices that were then charged for gas in Peoria?

Objected to same grounds.

A. My impression is—I am not positively certain—that fuel gas was 75c. and illuminating gas $1.25.

38. What, if any, conversation passed between you and Mr. Sumner R. Clarke on the occasion mentioned by you with reference to the prices at which gas could be furnished in the Peoria territory and make a good profit on the investment of the kind which was then in contemplation?

(Objected to as incompetent and immaterial.)

A. I don't think there was anything said between us on that subject; I don't think he mentioned that matter.

39. What, if any, inducement did he hold out to you as a reason why you ought to become interested in the new company?

Objected to same grounds.

A. I don't know that he held out any particular inducement; as I said, I had known Mr. Clarke for a good many years; he said they were going to organize a new company and he thought it would be a paying investment and wanted me take a little stock in it and on his recommendation, as I remarked before, I took some stock.

40. State whether or not one of the purposes for the organization

of a competing company was to give the city and citizens of Peoria gas at lower rates than were then paid?

Objected to same grounds.

A. Yes, that was my understanding.

41. State whether or not that was a matter of general discussion among the people proposing to become associated in the new company at the time they were preparing for its organization?

Objected to same grounds.

A. I don't hardly believe it was a matter of general talk among the stockholders; at least I don't remember it.

1055

42. With how many of those who ultimately subscribed for stock did you have interviews pertaining to the proposed company prior to the time that the subscription list was made up? and, for the purpose of refreshing your recollection as to who the subscribers were, I will call your attention to the names of the subscribers appearing in Exhibit "18" now shown you?

(Objected to same grounds.)

A. I had no talk or conversation with any of the subscribers named in this exhibit with the exception of Sumner R. Clarke, that I remember of.

43. State whether or not you were at that time well acquainted with all of the gentlemen whose names appear on that subscription list?

Ans. Yes sir; I was very well acquainted with them.

44. And had you been for a considerable period of time?

A. Yes sir;

45. What part of that list had been made up at the time you became a subscriber, if you remember?

Objected to as immaterial and irrelevant.

A. I don't remember about that; I think the list was only partially made up when I subscribed to the stock.

46. Who presented that paper to you for your signature?

Objected to same grounds.

A. Sumner R. Clarke, as I remember it.

47. State whether or not during those preliminary negotiations there was any discussion in your presence with respect to antagonisms that might be encountered in undertaking to secure a license or franchise, growing out of damage, or possible damage, to paved streets?

Objected to as incompetent and immaterial.

The MASTER: I don't think that material but the witness may answer subject to the objection.

A. None that I remember of.

48. State whether or not that subject came up in any form
1056 either then or during the pendency of the ordinance in the council?

A. Objected to same grounds.

A. Not as I remember it—not among the stockholders.

49. What, if anything, did you have to do with securing the frontage necessary as a basis for the passage of the ordinance?

A. So far as to do anything personally I had nothing to do with it, so I don't remember just what frontage was required, or how they got it.

50. What, if anything, had you to do with that in an official way?

Objected to as immaterial and irrelevant.

A. Nothing.

51. State whether or not you knew that the frontage was being obtained as preliminary to the passage of the ordinance?

A. Yes, I knew it in a general way.

52. Did you or did you not know from time to time what success attended attempts to secure such frontage?

Objected to as immaterial and irrelevant.

A. No sir; I don't think I did.

53. Did you know who were employed as solicitors in that work?

Objected to same grounds.

A. No sir; I don't think so.

54. From what source, were the funds used in the prosecution of the preliminary work, obtained?

Objected to as incompetent, immaterial and irrelevant.

A. I don't know.

55. State whether or not that question ever came up for discussion in your presence?

(Objected to same grounds.)

A. I don't remember that it ever did.

56. State whether or not you were asked to contribute, or did in fact contribute to any such fund?

(Objected to same grounds.)

A. No sir;

1057 57. How long had the work been progressing—speaking now with reference to the time the expenses first begun—before the first assessment on the capital stock was made?

Objected to as incompetent and immaterial.

A. I don't remember that; I don't remember when the first assessment was made.

58. Were you present at the meeting of the subscribers for stock at the time of the preparation of the necessary papers upon which your official certificate was issued?

A. I may have been but I don't think I was.

59. Were you at any time a director in the complainant corporation?

Ans. Yes sir;

60. Under what circumstances did you become a member of the directory at that time?

(Objected to as immaterial and irrelevant.)

A. Well, there were no peculiar circumstances that I remember of; I was simply selected among a number of other gentlemen who were present and elected.

61. Did you or not know prior to the meeting at which you were elected that your name would be proposed as a director of the company?

(Objected to as immaterial.)

A. No sir;

62. What, if anything, did you have to do with making up the list of directors that were elected at the time of the organization of the company?

(Objected to as immaterial.)

A. Nothing.

63. What did you know of it either personally, or from association with the other subscribers?

(Objected to as immaterial.)

A. Nothing.

64. I think you have already testified you were not present at that meeting?

A. I must have misunderstood your former question; I thought you referred to the preliminary arrangements for the delivery
1058 of th- certificate etc., I was present at the original meeting when the directors were elected; I thought it was a subsequent meeting you refer-ed to before.

65. At that meeting were all, or substantially all, of the subscribers present?

(Objected to as immaterial.)

A. Yes sir; I think so—most of them.

66. Who, if anyone, at that meeting made up the list of directors, or in what manner were their names placed before the meeting?

Objected to as immaterial and irrelevant.

A. I don't remember that there was any list made up; some gentleman, I have forgotten who, was elected chairman of the meeting

and the directors seemed to be selected offhand without any previous arrangement.

67. Then you have at this time no recollection as to who proposed the names of the various parties?

Ans. No sir;

68. Do you remember whether they were all proposed by one person, or different persons?

(Objected to same grounds as before.)

A. I think they were proposed by different persons; I am quite certain they were.

69. Do you at this time remember who was the presiding officer at that meeting?

(Objected to same grounds.)

A. No, I don't remember now.

70. Do you remember who the secretary was?

Objected to same grounds.

A. It seems to me Theo. J. Miller was secretary.

71. State whether or not a record of the proceedings of that meeting was made at that time?

(Objected to same grounds.)

A. I presume so.

72. State whether or not the minutes of that meeting were ever presented for approval or disapproval at any subsequent meeting?

Objected to same grounds.

1059 A. I don't remember but I presume they would be.

73. What, if any, arrangement was made at that time, or before or subsequently, with reference to the length of your term of office or your term on the directory?

(Objected to same grounds.)

A. I have forgotten the terms of the directors.

74. Do you remember whether or not you served your full term?

A. No sir; I think not.

75. Do you remember how long you were in the directory?

A. Not very long.

76. What arrangement was made at that time, or before, or after, with reference to the length of your term of office?

Objected to as immaterial and irrelevant.

A. I don't think there was any arrangement made as to the time I was to serve.

77. When did the board of directors then elected meet to organize?

(Objected to same grounds.)

A. I don't remember that; I don't remember whether they ganized at that meeting or at a subsequent meeting.

78. Do you remember who was elected permanent president a secretary of the board of directors?

A. It seems to me Sumner R. Clarke was elected president, bu am not certain, and I think Theo. J. Miller was elected secretary.

79. How many directors' meetings did you attend?

A. I don't remember; not very many.

80. What was the character of the business transacted by t board at such meetings as you attended?

Objected to as immaterial and irrelevant.

A. I don't remember much about the meetings of the board e cept the first one and the last one I attended.

81. State whether or not at those meetings records of the proceed ings were kept and at subsequent meetings presented to th
1060 board for approval and disapproval and passed upon by th board?

Objected to as immaterial and irrelevant.

A. I don't remember about that; I presume they would be.

82. Are you able to state from recollection how long you remained on the board of directors?

Ans. No, but it was not very long.

83. What were the circumstances under which you severed you connection with the board?

Objected to as immaterial and irrelevant.

A. I resigned my position on the board for the reason, first: I did not care about it, and secondly, to allow the stockholders to elect another director in my place.

84. In what manner and under what circumstances did the subject of your resignation first come up for consideration?

Objected to same grounds.

A. As I remember the secretary asked me if I cared to continue to serve on the board of directors any longer and I told him "No;" then, I think, he asked me if I would just as leave resign, and I said, "Yes."

85. That was the first you had heard of the subject?

A. Yes, at the meeting.

86. State whether or not you did at that time present your resignation?

Ans. Yes sir; I did right then.

87. And was it then acted upon?

Ans. I think so.

88. Who was elected to fill the vacancy caused by your resignation?

(Objected to as immaterial and irrelevant.)

A. I don't remember but it seems to me it was some outside man—some man from Chicago or somewhere; I have a name in mind, but whether he was elected in my place or somebody else's I don't remember.

89. Who is the gentleman to whom you refer?

Objected to same grounds.

A. Mr. Walton and it seems to me he was elected.

1061 90. Were you acquainted with Mr. Walton?

Ans. No sir;

91. Who presented his name?

(Objected to same grounds.)

A. I was out of the board then after I resigned.

92. Did you withdraw immediately upon your resignation?

A. I think so.

93. Through what channel did the knowledge come to you that Mr. Walton had been elected to fill the vacancy, if you remember?

Objected to as immaterial and irrelevant.

A. I think I saw it in the newspapers, but I am not certain.

94. State whether or not in the early history of complainant company it was customary for the directors to publish reports of their proceedings and meetings in the Peoria Press?

Objected to same grounds.

A. I don't remember about that.

95. Have you ever met Mr. Walton and formed his acquaintance?

A. No sir; I never have met him.

96. Do you know for how long a period of time O. J. Bailey remained in the directory?

(Objected to same grounds as before.)

A. I don't remember.

97. Were you present when his resignation was presented?

A. Not unless it was presented at the same time mine was and that I don't remember.

98. State, if you know, why your resignation was requested rather than that of any other member of the board?

Objected to as incompetent and immaterial.

A. I don't know.

99. Was any reason at that time given or suggested?

Objected to same grounds.

A. None other than as I have stated; I think it was Mr. Miller asked me if I cared to serve any longer on the board; I told him "No;" he asked me if I would just as leave resign; I said "Yes,"

and I think he said they wanted to elect this man Walton
1062 believe it was, as a member of the board.

100. Was John R. Walsh of Chicago a member of t
board at that time?

(Objected to same grounds.)

A. No sir.

101. Do you know whether or not Mr. Walton was, at the time
his election, a stockholder in complainant company?

Objected to same grounds.

A. No sir; I don't know.

102. When you became a subscriber to the capital stock sta
whether or not you knew that any persons outside of residents
Peoria were to become stockholders, or personally interested in th
new industry?

(Objected to as immaterial and irrelevant.)

A. No sir; I did not.

103. Who did you understand was furnishing the major part o
the capital for the enterprise?

(Objected to as incompetent & immaterial.)

A. Why, I understood the subscribers here were going to build a
gas plant, but how they were going to get the money I never con
sidered.

104. Did you know at that time what the expense of installing a
plant ready for operation would be?

Ans. No sir;

105. Did you see or know of any estimates for the construction?

Objected to as immaterial and irrelevant.

A. No sir;

106. At the time you made your subscription, state whether or
not you knew who the other subscribers were to be and the amount
for which they had severally become liable?

Objected to same grounds.

A. I think I knew some of them.

107. Did you know all of them and the extent to which their
subscriptions would be met?

A. No sir; I didn't know all of them, or the extent, but I knew
several of them who were to become stockholders—I think
1063 some of their names were on the papers.

108. In previous conversations you had had with Mr.
Clarke, state whether or not he had advised you to what extent he
proposed to become a subscriber?

(Objected to as incompetent and immaterial.)

A. I think he had but I don't remember the amount.

109. When you saw the magnitude of his subscription, did it or not cause any surprise to you?

(Objected to same grounds.)

The MASTER: I don't think that material; I do not see any possible view of this evidence by which it could become material, but the witness may answer subject to the objection.

A. Yes, I was rather surprised.

110. At the time the preliminary arrangements for the organization were being made, what was the discussion and understanding with respect to the new enterprise being composed entirely of Peoria men or otherwise?

(Objected to same grounds.)

A. I don't think there was anything said about that except that several good Peoria men were going to be interested in the enterprise.

111. Up to the time you became a subscriber what, if any, knowledge had you that anyone outside of Peoria would be an interested party in the new company?

(Objected to same grounds.)

A. I had no knowledge that anyone outside would be interested in the company.

112. When did you for the first time, if at all, learn that John R. Walsh of Chicago was a stockholder directly or indirectly, in the complainant company?

(Objected to same grounds.)

A. It seems to me it was sometime about the time of the passage of the ordinance, or after the passage of it.

113. In what way did that information come to you?

Objected to same grounds.

A. I don't remember that; I got the information in some way or other that John R. Walsh of Chicago was largely interested
1064 in this company, but from whom I don't remember.

114. What was your information with reference to his being a majority or minority holder?

Objected to as incompetent and immaterial.

A. I don't know that I gained any information as to how much or how little stock he held; I could only give my own conclusion.

115. State whether or not to the best of your recollection at the time of the passage of the ordinance you had any knowledge that Mr. Walsh was to become an interested party, or was then an interested party?

(Objected to as incompetent and immaterial.)

A. No sir; I think not; I had no such knowledge.

116. While arrangements were being made for the organization of your company in what territory, as compared with that occupied by the Peoria Gas Light & Coke Co., did you understand your company proposed to operate?

(Objected to same grounds.)

A. I don't think there was anything said to me on that subject as I remember it.

117. State whether or not you then knew the extent to which it proposed to operate?

(Objected to same grounds.)

A. No sir;

118. Did you or did you not know whether the enterprise was to be a large or small one?

(Objected to same grounds.)

A. I understood it was to be a large one.

119. State whether or not one of the purposes of the organization was to enter into competition with the old Peoria Gas Light & Coke Co., in the Peoria territory?

(Objected to same grounds.)

A. Well, as I understood it the company was to be organized and a plant built for the purpose of doing business and furnishing the people with gas, and, of course, I thought it would naturally come in competition with the old gas company; it was my idea it would. I don't see how it could be otherwise as I understood it at that time.

1065 120. Were you then familiar in detail, or to any considerable extent, with the magnitude of the profits that had been made by the old gas company during your residence in the city?

Objected to same grounds.

A. No, I knew nothing in particular only a general understanding that it was a profitable business.

121. What sized plant did your company propose to build as compared with the demand for gas in this territory?

Objected to as incompetent and immaterial.

A. I don't know.

122. What with reference to its being modern or otherwise?

A. Well, I think they said they would put up a modern plant with all the modern improvements for making gas and delivering it to the people.

123. What, if any, discussions were had with reference to the prices at which your company could furnish gas from its modern plant as compared with the prices at which the old company could supply gas?

(Objected to same grounds.)

A. My impression is it was generally understood they could make a good quality of gas and sell it a little cheaper than it was being sold by the old company and make a profit, but as to what the exact prices should be I don't remember that that was generally talked about.

124. Who, among the stockholders, as you then understood it, was skilled in the gas industry?

(Objected to same grounds.)

A. I didn't understand that any of them were particularly skilled in that business.

125. Upon whom did you and your associates depend for information as to the cost of production and the probable profits which the new enterprise might make?

Objected to as immaterial and irrelevant.

A. So far as I was concerned I didn't depend on anyone;
1066 I didn't know anything about it.

126. During those preliminary suggestions of development, what were the arrangements, if any, with reference to management?

A. I don't remember that there were any.

127. When, for the first time, did the subject of competent and skilled management come up for consideration?

Objected to same grounds as before.

A. So far as I know the first I knew of that was about the time I resigned and another man elected in my place.

128. Was that prior to the time your company commenced the operation of its business of distributing gas?

Objected to same grounds.

A. I think it was.

129. Was there a discussion in that board meeting with reference to the management of the technical part of the business?

Objected to as immaterial and irrelevant.

A. No sir; that is, not at the meeting I attended because I resigned and another man was elected in my place; as I understood it he was elected because he had some skill of some kind in the gas business, but I don't remember that it was discussed before I resigned.

130. Do you remember whether or not the work of construction had been commenced at the time of your resignation?

A. I think not but I am not certain about that.

131. Do you remember whether or not a site for a gas house had then been purchased?

Ans. I don't remember about that.

132. Did you or did you not have anything to do with the purchase of the real estate upon which the plant was constructed?

A. No, I had nothing to do with it.

133. Has this Mr. Walton, to whom you refer, ever been a resident of Peoria?

Ans. Not to my knowledge.

134. State whether or not at that or at any other meeting
1067 he was represented as being a man skilled in gas production?

Objected to as immaterial and irrelevant.

A. No sir; I don't remember that he was.

135. State whether or not at the time your resignation was requested and Mr. Walton was elected in your place, you were also informed that he was an associate of John R. Walsh in Chicago?

Objected to as immaterial and irrelevant.

A. I understood they were connected together in the gas business.

136. Did you or not know that Mr. Walsh was then interested in other gas plants?

(Objected to same grounds.)

A. I had heard that he was.

137. Do you know Francis W. Little the present manager of your company?

Ans. Yes sir;

138. When, with reference to the organization of your company, did you become acquainted with him?

Ans. It seems to me it was some little time after the organization of the company; I don't remember how long; it must have been that spring some time.

139. When, with reference to the passage of the ordinance granting your company a license to use the streets, if you remember?

A. I don't believe I met Mr. Little until after the passage of the ordinance.

140. Do you remember the circumstances under which you first met him?

Ans. No sir;

141. Do you remember where it was?

Ans. I think it was after the company had established an office down near the banks on lower Main street.

142. Do you know whether or not it was after he had associated himself with the company?

A. Oh, yes, he was in the office when I first met him.

143. And to the best of your recollection that was subse-
1068 quent to the date of your resignation?

A. I think it was but I am not so clear on that point, however.

144. Did you know at that time how Mr. Little happened to become interested in your company, or become its manager?

Objected to as immaterial and irrelevant.

A. I understood he was connected in some way with Mr. Walsh in Chicago; I think they were associated, that is, had some interests together in gas at some places and he was here on that account; my memory is not so clear on some of these things because I did not charge my memory with it, or pay much attention to it.

145. Did you know at that time where Mr. Little had previously been employed and in what capacity?

Objected to as immaterial and incompetent.

A. I understood, I believe, that he had been connected with some gas plants down in Ohio, or some of the neighboring States.

146. Did you also know who owned those gas plants?

Objected to same grounds.

A. I understood that Mr. Walsh was interested in them; I did not know he owned them.

147. State whether or not all of those matters pertaining to the relations existing between Mr. Walsh, Mr. Walton and Mr. Little, were known generally among the people interested in the Peoria Gas & Electric Company at the times concerning which you have testified?

Objected to as immaterial, incompetent and calling for a conclusion.

A. I don't know what others knew about it; I cannot testify only to what I knew.

148. State whether or not those questions were discussed between you and others of the stockholders, or by others in your presence?

(Objected to same grounds.)

A. I think there was perhaps some discussion among some
1069 of the stockholders in relation to these men, or some of the matters that came up; I think I had a little talk with Ben. Warren, Jr.,—outside of that I don't remember of any others.

149. Mr. Warren, from his conversation, evidently knew it did he not?

(Objected to same grounds.)

A. What do you mean?

150. At the times concerning which you have testified, when you state you obtained information to the effect that Mr. Walsh, Mr. Little and Mr. Walton were associated in various enterprises?

A. Yes, I think he knew it then; I am satisfied he did.

151. Is it your recollection that Mr. Warren is the only one with whom you discussed those particular matters?

A. Yes, I think he is the only man I had any talk with.

152. What was the character of the work that was being carried on by your company during the period covered by your membership in the directory?

(Objected to as incompetent and immaterial.)

A. I think the particular work was securing frontage and securing the passage of the ordinance through the city council.

153. State whether or not those matters were under discussion by the board from time to time during that period?

A. No, I think not.

154. Do you remember how long a period of time was occupied in obtaining frontage?

Ans. No sir;

155. Did you at that time know the men who were engaged in that part of the work?

A. As I remember it Theo. J. Miller was the most active man in directing the work for securing the frontage.

156. Did the company have its own office at that time?

A. I don't think it did.

157. Do you know who paid those men for the services they rendered?

(Objected to as immaterial and irrelevant.)

A. No sir; I don't remember it.

158. When was the first assessment upon the stock made?

1070 Objected to same grounds.

A. I don't remember.

159. When was it with reference to the time the frontage was secured and the ordinance passed?

(Objected to same grounds.)

A. My recollection is it was afterwards but I am not certain about it.

160. What was the amount of the first assessment made upon the capital stock?

(Objected to as immaterial and irrelevant.)

A. I don't remember that.

161. How many assessments have been made?

Objected to same grounds.

A. I don't remember.

162. State whether or not you have paid all assessments that have been made upon your stock?

(Objected to same grounds.)

A. Yes sir;

163. As the assessments were levied?

Ans. Yes sir;

164. State whether or not you took all the stock for which you subscribed?

(Objected to as immaterial.)

Ans. Yes sir;

165. Have you vouchers or checks from which you can determine the number of assessments that have been made upon this stock and their magnitude?

(Objected to as immaterial.)

Ans. Yes sir;

166. Will you examine those vouchers and report subsequently, if called upon for that purpose?

(Objected to as immaterial.)

A. Yes sir;

167. State whether or not while you were a member of the board of directors the subject of rates to be charged when your company was ready for operation came up for discussion?

Objected to as incompetent and immaterial.

A. I am not certain about that; there was a discussion one day about rates, but I don't remember whether it was before or after I was on the board.

168. State whether or not during the period covered by
1071 your membership any definite action was taken with reference to the rates to be established when you were ready for operation?

Objected to as immaterial, incompetent and irrelevant.

A. No, I think not; not while I was a member of the board.

169. At the time your stock subscription was solicited, or subsequently, what, if any, statements or representations were made to you as to the extent to which you would be called upon by assessments upon it?

(Objected to as incompetent and immaterial.)

A. I don't remember that there were any.

170. State if it is not true that you were given to understand that only a portion of your subscription would ever be called for?

Objected to same grounds.

A. I don't remember about that; I don't think there was anything said to me on that subject; I am not certain about it however.

171. State whether or not the first assessment was levied during the time you were a member of the board of directors?

Objected to same grounds.

A. I don't remember that.

172. Have you at this time any recollection of participating in levying an assessment upon that stock?

A. No sir; I have no recollection of it.

172. What, if any, knowledge have you as to the assessments paid by other stockholders as compared with those you yourself have paid?

Objected to same grounds.

A. I have no knowledge as to what others have paid.

173. State whether or not within your knowledge at the time of your preliminary negotiations respecting the organization of your company John R. Walsh was interested in the Peoria Gas Light & Coke Co.?

(Objected to as incompetent and immaterial.)

A. Not that I know of.

174. Have you ever known it since?

(Objected to same grounds.)

A. I understand that he is; I have no personal knowledge of i-

1072 175. What knowledge have you as to the magnitude of his interest in the old company?

(Objected to same grounds.)

A. I have no knowledge on that.

176. During the time you were a member of the board of directors, what, if anything, was done by the board in the way of auditing accounts?

(Objected to as immaterial and irrelevant.)

A. I don't remember that anything was done.

177. State whether or not during that period the duty of auditing were committed to a committee of the board?

Objected to same grounds.

A. I don't remember about that.

178. Do you remember whether or not the subject of expenditures came before the board during the time you were a member?

A. I don't remember that that subject came up.

179. Did you or did you not know that the company was during that time under expense?

A. Yes, I knew they must be under some expense.

180. Did you or did you not know from what source those expenses were being provided for?

(Objected to as incompetent, immaterial.)

A. No, I didn't know.

181. State whether or not those questions were ever discussed in the board, or by the stockholders outside in your presence?

Objected to as immaterial and irrelevant.

A. No sir; I think not.

182. Up to the time of the levying of the assessment upon the stock, to which you have referred, what, if any, contribution did you make to the expense account of complainant company?

Objected to same grounds.

A. I don't remember of having made any.

183. Who, of the other subscribers, within your knowledge, had made such contributions?

(Objected to same grounds.)

A. None I knew of—I had no knowledge of it.

1073 184. Do you know whether or not your company had a bookkeeper during the time you were a member of the directory?

A. I don't remember; I presume they must have had somebody to keep track of the accounts.

185. Do you know to whom was intrusted the duty of distributing the funds?

(Objected to as immaterial and incompetent.)

A. No sir;

186. Do you know whether or not any vouchers for such disbursements for such expenditures were taken?

(Objected to same grounds.)

A. I don't know, I could not say on that at all.

187. State whether or not a record of the financial standing of the company was kept, if so, where?

(Objected to same grounds.)

A. I have no knowledge on that subject.

188. What is the regular time for the holding of directors' meetings or stockholders' meetings of complainant company?

Objected to as immaterial and irrelevant.

A. I don't know.

189. How many stockholders' meetings have you ever attended?

A. I never attended but one—I believe the first one when they organized.

190. Do you know whether or not any others have been held?

Objected to same grounds.

A. Yes, others have been held.

191. Have you or not received notice of such meetings?

Ans. Yes.

192. State whether or not the notices which you have received were for regular or special meetings?

Objected to as incompetent and immaterial.

A. I don't know whether they were regular or special.

193. How many changes in the directory have been made since the organization of the company?

(Objected to as immaterial, irrelevant.)

A. I don't know whether there have been any changes made or not since I resigned from the board.

1074 195. Do you know whether or not, except at the first meeting of which you have testified, any directors have ever been elected by a vote of the stockholders?

(Objected to same grounds.)

A. No sir; I don't know for the reason I have never attended a stockholders' meeting except the first one, that I remember of.

196. Do you know who constitutes the present board of directors?

Objected to same grounds.

A. No sir; I don't know.

197. Do you know whether or not John R. Walsh is a member?

A. No sir; I don't know.

198. Do you know whether Francis W. Little is a member?

A. I think he is but I am not certain about it.

199. From time to time since the organization of the complainant company through what channel has knowledge come to you concerning its financial condition?

(Objected to same grounds as before.)

A. As a matter of fact I don't know much about the financial condition of the company.

200. Have you at the present time, or have you had in the past, any knowledge of the receipts and disbursements of the company?

Objected to as immaterial and irrelevant.

A. No sir; none whatever.

201. Do you know whether or not any financial statements showing the condition of the company have been furnished to stockholders or to the board of directors?

(Objected to same grounds.)

A. I don't think I have ever received any or seen any.

202. Within your knowledge have any of the other stockholders received such statements?

(Objected to same grounds.)

A. Not to my knowledge.

203. To whom, since the organization of the company, has its financial affairs been intrusted?

(Objected to same grounds.)

A. I think largely to Sumner R. Clarke and John R. Walsh.

1075 204. State whether or not those gentlemen in the management of the financial affairs of the company are in any way subject to the jurisdiction of the board of directors?

Objected to as immaterial, irrelevant, and asking for a conclusion of law; not the best evidence.

The MASTER: I don't think it competent to show it in that way but the witness may answer subject to the objection.

A. I don't know just how they might be subject to the order of the board of directors, or whether the board of directors have any particular power in the matter.

205. To what extent does the board of directors supervise, direct or control the financial affairs of the corporation in this particular case?

Objected to as immaterial, irrelevant, and does not call for the knowledge of the witness while he was a director.

The MASTER: I don't think it competent to prove that fact in that manner, but the witness may answer subject to the objection.

A. I don't know.

206. Within your knowledge, acquired as a member of the board, does it at all?

(Objected to same grounds as before.)

A. Judging from my own knowledge of its affairs I should say not.

207. Did you know, that is, at the time, about the time your company began to furnish gas?

A. Yes, I knew about the time they began to furnish gas, but I don't remember what time it was now.

208. Do you know at what price it was then being furnished by the old company, and also at what price your company furnished it?

Objected to as immaterial and irrelevant.

A. I think the old company charged at that time $1.00 for illuminating gas and 75c. for fuel gas, as I remember it.

209. What is your recollection as to the prices charged by

1076 your company when it began business?

(Objected to same grounds.)

A. Prices went down I believe directly after that.

210. Do you remember how many different reductions were made in price?

(Objected to same grounds.)

Ans. No sir;

211. Do you remember what those different reductions were?

Objected to same grounds.

A. No, I only have a recollection of about how low they got.

212. What was the lowest point reached?

(Objected to same ground.)

A. I think gas reached 30c. a thousand feet, but I don't remember whether both companies made the same price or not.

213. What, if anything, did you have to do with the making of those prices so far as concerned your company?

Objected to as immaterial and irrelevant.

A. Nothing whatever.

214. State whether or not within your knowledge the stockholders of your company were in any way consulted in fixing those prices?

(Objected to same grounds.)

A. I think not, however, I am not sure about that.

215. Are you able to state how long the price continued at 30c.?

Objected to same grounds.

A. I don't remember but it was for some time.

216. State whether or not you at the time knew of contracts made by your company extending over considerable periods, for a price of 30c. per thousand or less?

(Objected to same grounds)

A. I understood both companies were making contracts around town in that neighborhood—contracts for a period of time.

217. To what extent, if you know, did your company make such contracts? and do you know of any particular institution or places they were made?

(Objected to as incompetent and immaterial.)

A. I don't know to what extent; the only institution I know of with which they made any contract—and I don't know what that price was—was with the board of supervisors; they made a
1077 contract with them of some kind for the lighting of the court house and jail.

218. Was that contract with your company or the old company?

Objected to as incompetent and immaterial.

A. I think it was with our company, but I don't know it officially, however.

219. Do you remember what change was made from the 30c. rate to which you have referred and about when it was done?

Objected to same grounds.

A. I don't remember just when that change was made; I remember well the fact it was made, but not the date.

220. Are you able to state at this time what that change was?

Objected to same grounds.

A. Well, it was a very radical change. That is to say, it was a change from a low price up to somewhat higher, I think, than the price had been before the new company got into operation.

221. Did you know in advance of that increase in price that such action was to be taken?

(Objected to same grounds.)

A. I knew the price was going to be increased, but I didn't know to just what point.

222. In what way did that information come to you?

Objected to same grounds.

A. Down at the office of the company.

223. Who was in charge of the office at that time?

A. Mr. Little, I believe.

224. What, if any, information did he give you at that time with respect to any change in prices to take effect at about the same time on the part of the old company?

Objected to as incompetent, immaterial and irrelevant.

A. Well, as I remember it they had gotten together in some way.

225. And had fixed upon a price which should subsequently be charged for gas?

(Objected to same grounds.)

A. I don't remember whether he said that or not.

1078 226. State whether or not you remember the fact that the advance was made by the two companies at the same time and to the same point?

(Objected to same grounds.)

A. I understood there was a general advance at about the same time, but whether to exactly the same point I don't remember.

227. I will ask you to refresh your recollection if the two companies did not publish simultaneously the same notice on the same day in the Peoria Press stating that the price on and after a certain date would be as stated in the notice and those prices were exactly the same?

(Objected to same grounds.)

A. I think I noticed that fact afterwards; I was in Chicago, I think, the day I heard of the advance, but think I noticed that afterwards.

228. Do you know at whose instigation those notices or either of them were published?

(Objected to same grounds.)

Ans. No sir;

229. Look at page 8 of defendant's answer in this case, now shown you, and state whether or not those are copies of the notices to which you have just referred?

A. Yes, these seem to be about as I remember it.

230. State whether or not the subject of the publication of those notices concurrently was discussed by the stockholders of your company, or by others interested in it subsequently?

Objected to same grounds.

A. I don't remember whether the subject of the publication of these notices was discussed or not; there was a little discussion about the price of gas, but I don't remember a discussion about the notices.

231. What, if any, discussion did you have, or did you hear among people interested in your company, with respect to the prices prior to the publication of those notices?

(Objected to same grounds.)

A. Well, at one meeting—I don't know whether all the stockholders were present, but a number of them were—there was
1079 some about the prices to be charged for gas and it was somewhat higher than several of us hoped it would be.

232. At this time are you able to give those figures?

Objected to same grounds.

A. I think Mr. Little said it looked to him that the price would be above a dollar for illuminating gas and above 75c. for fuel gas as I remember it.

233. Are you able to locate the time when that question arose?

A. No, but it was some little time—I don't remember whether it was very long before this or not.

234. What were the figures urged by yourself and others to whom you have referred at the same time?

(Objected to same grounds.)

A. When the price of gas was mentioned I think Mr. Bailey and myself—there was not very much discussion of the subject—inquired about the price of gas and in answer to Mr. Little, I think we said we had hoped, under all the circumstances, that the price of illuminating gas would be a little under a dollar and the price of fuel gas a little under 75 cents.

235. Was that during the time you and Mr. Bailey were both members of the directory?

Ans. No, I think that was after we were out.

236. State whether or not, in the same connection, there was any discussion as to the circumstances and representations under which the city council had granted your company its ordinance?

Objected to as incompetent and immaterial.

A. I don't remember whether anything was said about the conditions and circumstances connected with the securing of the ordinance or not.

237. State whether it is not a fact that a prominent feature of the application of your company for a license was a proposed reduction in the prices?

(Objected to same grounds.)

A. I think so; it seems to me I signed a paper to that effect.

238. Was it or was it not the intention of those associating
1080 themselves together in securing this license to furnish gas at a lower price than then charged by the old company?

Objected to same grounds, also as calling for a conclusion.

A. As I remember it we were supposed to sell gas a little bit cheaper than it then was and to furnish a good quality of gas.

239. What was the discussion and conclusion among those associating themselves together with reference to operating an independent gas plant in the city of Peoria?

Objected to as incompetent and immaterial.

A. I don't think there was any discussion in our first meeting there about operating an independent company; I don't remember that there was any discussion on that subject.

240. What was the understanding as to whether or not the new company, if organized, should be sold to the old company, or combined with it, for the purposes of maintaining prices, if there was any understanding in that respect?

(Objected to same grounds.)

A. There was no understanding that I knew of.

241. Were the people interested in the proposed new enterprise old or new residents of Peoria?

A. Most of them or all of them were old residents of Peoria; Chauncey D. Clarke did not live here at the time, but he was raised here; the others were all old residents.

242. To what extent, if at all, did you participate in the preparation of the ordinance as it was submitted to the city council?

A. None whatever.

243. Were you consulted with reference to what it should contain?

Ans. No sir; the only thing I was consulted about was some of the papers that were addressed to the city council by the stockholders or directors—I have forgotten which—and signed by them.

244. Did you know that the ordinance was being prepared and did you also know in a general way its scope?

A. I didn't know anything about the ordinance except
1081 what I saw in the papers; I didn't see it; I presumed, of course, they were preparing an ordinance.

245. But you personally had nothing to do with it?
Ans. No sir;
246. While the ordinance was pending before the city council, did you know the fact?
Ans. Yes sir; I knew it was pending.
247. To what extent if at all, did you personally participate in procuring its passage?
A. I don't know that I did anything in particular except sign the papers we addressed to the city council with the exception that Mr. Thode was a member of the city council and was also a member of the board of trade, and he wanted to know about the ordinance, about the company etc., and I told him what I knew about it and what I thought; I don't remember that I said anything to any other alderman; I was not up to the city council or city hall about it.
248. And you have no recollection of appearing before any committee having the ordinance in charge?
Ans. No sir;
249. You were not present at the time of its passage?
Ans. No.
250. Look at the paper now shown you marked Exhibit "19" and state whether or not you signed it?
Ans. Yes, that is my signature.
251. Who presented it to you for your signature?
A. I am inclined to think it was Theo. J. Miller; it might have been Mr. Clarke, but I think it was Mr. Miller.
252. Did you know at the time you signed that paper whether or not your proposed ordinance was pending before the council?
A. Well, I don't remember; I signed these papers with the understanding they were all right etc.
253. What, if any, representations were made to you at the time this paper was presented to you for your signature, touching the question of good faith in furnishing it to the council?

Objected to as incompetent and immaterial.

A. I understood all the time we were to act in good faith with the people.

1082 254. State whether or not when you signed this paper you believed its statements and representations were true?

Objected to same grounds.

A. Yes sir;
255. State whether or not you then believed its statements and representations would be carried out in good faith provided an ordinance were granted as you were then seeking?
Ans. Yes sir;
256. State whether or not at that time you believed the representations and statements of Exhibit "19" could be carried out in good faith and an investment necessary for installing the plant pay a good return in profits?

Objected to as incompetent, immaterial, irrelevant, being a statement entirely outside of the paper itself.

A. These papers I signed, I signed in good faith excepting them to be carried out in good faith; while I did not expect a large return possibly right away, I thought in the long run it would be a good, fair paying investment.

257. State whether or not that was the opinion of the others associated with you, so far as expression was given, at or about that time?

(Objected to as incompetent, immaterial and irrelevant.)

A. So far as I know it was.

258. State whether or not at the time you signed that paper you knew that John R. Walsh of Chicago, or any person outside of Peoria, had any interest in the complainant company, or was to have any interest therein?

(Objected to same grounds as before.)

A. No sir; I didn't know that he had any interest in it, or that any person other than Peoria people were interested in it or to be interested in it.

259. State whether the fact, as you then supposed it to be, that it was strictly a Peoria enterprise, had nothing to do with your becoming interested in it and a subscriber to the stock?

Objected to same grounds as before and also as calling for
1083 a conclusion.

A. I don't know whether there was any question at that time about any outside capital being interested; I don't remember that that occurred to me at all; I thought it was to be a Peoria enterprise and a number of Peoria men were in it and I went into it, of course, with the view of ultimately reaping some profit, but as a citizen of the city too; I thought it would benefit the city.

And further the witness saith not.

Adjourned by agreement until Wednesday, March 12, 1902 at 9:30 a. m.

United States court room, Government building.

PEORIA, ILL.,
WEDNESDAY, *March* 12, 1902—9:30 o'clock a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner, Mr. E. C. Ritcher and Mr. W. T. Abbott, appearing for complainant Mr. F. H. Tichenor and Mr. Henry Mansfield, appearing for defendant.

LEWIS A. MCFADDEN, called on behalf of the defendant, being first duly sworn according to law, deposes and says.

Direct interrogatories by Mr. TICHENOR:

1. State your name, occupation and place of residence?

A. Lewis A. McFadden; physician and surgeon; Peoria, Illinois.

2. How long have you been a resident of Peoria?

A. Since July 1887.

3. And during that time have you been engaged in the practice of your profession in Peoria?

Ans. I have.

4. State whether or not you have ever been a member of the city council of the city of Peoria, if so, when?

A. Yes sir; I served two terms; I think it was from May
1084 1896 to May 1900.

5. The ordinance or license granting to complainant company the right to use the streets of Peoria was granted during the time you were in the council, was it not?

Ans. It was.

6. State whether or not you remember the fact of the pendency and passage of that ordinance?

Ans. I remember it very well.

7. During what portion of the time the ordinance was pending were you in the city of Peoria?

A. I don't remember, but I must have been here all the time; the only time I am away is in the month of August each year when I take my vacation.

8. State whether or not during the time this ordinance was pending you attended all the meetings of the city council?

A. According to my recollection I did.

9. How soon after the draft of the ordinance had been presented to you, were you aware of the fact it was before the council for consideration?

A. I don't just remember that; I think it was right away.

10. Do you remember in a general way at this time about how long the ordinance was pending?

A. Oh, perhaps two months; I mean from the time the petition came before the council until the ordinance was passed—2 or 3 months.

11. State whether or not during that time you knew the people purporting to be interested in the proposed enterprise?

A. Some of them I knew personally and I believe all of them by reputation.

12. For what period of time had you known them personally or by reputation?

Ans. Almost ever since I came to Peoria.

13. What was the standing and reputation of all those men in Peoria, both for integrity and financially?

A. They all stood well in both respects; their reputation was *gilledged*.

1085 14. State what questions, if any, were discussed by you and other members of the council bearing upon the ordinance in question during its pendency, either for or against it?

Objected to as immaterial and incompetent.

A. Perhaps about the first question that came up was the tearing up of the streets.

15. What was the discussion with reference to that feature of the case?

(Objected to same grounds.)

The MASTER: I do not see the materiality of that, but the witness may answer subject to the objection.

A. Well, there had been quite a number of streets recently paved, viz: Jefferson, Madison, Monroe and other streets, and some of the aldermen did not like the idea of having those streets torn up so soon after the pavement was laid and spoil and damage the streets and alleys. That seemed to be one objection to granting the franchise by some of the aldermen, and we thought it worthy of consideration.

16. What, if any, reasons were urged why an ordinance of that character should be passed granting a license or franchise to a new company in this territory?

Objected to as incompetent, immaterial and irrelevant.

A. One was that we would have competition and as a result of competition we were to have cheap gas; another was, that it was a legitimate scheme backed by several of the most prominent, worthy and influential gentlemen in Peoria.

17. So far as you knew at that time who, if anyone, outside of Peoria people had any interest in the proposed plant, or was to have any interest in it?

(Objected to as immaterial and irrelevant.)

A. It was represented to me that no one would have anything to do with this except Peoria men—that it was a Peoria enterprise.

18. State whether or not that fact had any weight with you in

reaching a conclusion as to the course you would take as a
1086 member of the city council?

Objected to as incompetent, immaterial and irrelevant.

A. That was what influenced me more than anything else to cast my vote for the ordinance.

19. To what extent during the pendency of that ordinance, was the subject discussed and considered?

(Objected to same grounds.)

A. Well, that question was talked about by the members of the council in groupes in the council chamber, or when they met on the streets, and it was also discussed freely upon the floor of the council chamber.

20. So far as your knowledge extended at that time, state whether or not any of the other gentlemen who were members of the city council had any knowledge that there would be any outside interest in this enterprise?

(Objected to as incompetent, immaterial.)

A. Not to my knowledge.

21. Look at the paper now shown you marked Exhibit "19" and state whether you ever saw it before?

A. I don't know that I saw this paper, but I remember of the contents of this paper being read in the city council; I don't recollect of any copy of this paper being furnished me, but remember of the petition being presented to the council.

22. Do you also remember the substance of it?

Ans. Yes sir;

23. And that it was before the council during the pendency of the ordinance?

Ans. I do.

24. State whether or not you remember any discussion in the council, or among the members, of the matters embodied in Exhibit "19" during the time this ordinance was pending?

Objected to as incompetent and immaterial.

A. Yes, I remember about the matter being discussed in the council.

25. State whether or not you supported the ordinance in question and ultimately voted for it when it was put upon its passage?

1087 Objected to as incompetent, immaterial and not the best evidence.

The MASTER: It is not the best evidence, but the witness may answer subject to the objection.

A. I did.

Mr. TICHENOR: I can have the witness stand aside and call the city clerk to prove that.

The MASTER: You can do that subsequently, whenever you want to.

Mr. RITCHER: Counsel for complainant agrees that the proper evidence as to how the witness voted may be introduced at a later period and have the same effect as though introduced now.

26. State to what extent, if at all, the statements and representations contained in Exhibit "19" influenced you in supporting and ultimately voting in favor of the ordinance granting a franchise or license to the complainant company to use the streets and alleys of the city of Peoria for the purpose of the construction of its plant?

(Objected to as incompetent and immaterial.)

A. In regard to the streets it was represented at least to me, and my recollection is to the council as well, that the gas mains would be laid in the alleys so far as practicable, and I think between the pavement and curb line where it could be done and that the streets would not be disturbed any more than was really necessary in constructing the new gas plant.

27. I don't think you exactly understood my question. (Int. 26 read to witness.)

A. Another thing was we were to have competition and that competition was to reduce the price of gas.

28. My question was aimed at the influence, or effect, that the statements embodied in the paper which you have examined, had in fixing that judgment?

A. Well, the statements made in that petition was the means of my voting for it.

29. State whether or not at the time you voted for that or-
1088 dinance when it was put upon its passage you believed the statements and representations contained in Exhibit "19" were true, and if the company were granted a license or franchise that those representations would be carried out in good faith?

Objected to as incompetent and immaterial.

A. Yes sir; that was my belief at the time that the company would do just as they said they would in that petition.

30. What knowledge or information had you during the pendency of that ordinance with respect to the intention of complainant company to enter the Peoria territory for the purpose of competing in the production and distribution of gas?

Objected to as incompetent and immaterial.

A. The intention was to reduce the price of gas and neither buy the other company out or sell out to it.

31. In other words it was to be a competitive industry?

Objected to as incompetent, immaterial and is merely the statement and conclusion of counsel.

A. Yes sir,

32. State whether or not that fact entered to a considerable ex-

tent into the course which you pursued with reference to the ordinance?

(Objected to as incompetent and immaterial.)

A. Yes sir; that was perhaps the main reason I voted for it because of its being a competitive company.

33. State whether or not at this time you remember of having been personally interviewed by any of the gentlemen, whose names appear on Exhibit "19"—I am speaking with reference to the time the ordinance in question was pending?

Ans. Yes sir; I do.

34. Who were they, if you remember?

A. Theo. J. Miller talked to me on one occasion in the city council.

35. Do you remember the conversation that passed between you at that time, if so, state it?

(Objected to as incompetent, immaterial.)

1089 A. In substance I do; he said this was a Peoria company, made up of Peoria men and Peoria capital; that the old gas company had been imposing upon the citizens of Peoria, charging exhorbitant prices and they were going to put in an up to date plant; that the effect of this petition before the council had already reduced the price of gas and it would still be perhaps lower, something to that effect, and in the future we would have cheaper gas if this ordinance passed the council, and he would like me to support it if I conscientiously could; that is about all the conversation I ever had with him.

36. State whether or not you then believed those statements and representations?

(Objected to same grounds.)

Ans. I did.

37. You have no recollection of conferring with the other people interested?

Ans. I am positive I never did.

Cross-interrogatories by Mr. ABBOTT:

1. With reference to this discussion about tearing up the streets and the objections that were made by some of the aldermen to that. Is it not a fact that the company proposed to lay the pipes very largely in the alleys in the more populous parts of the city?

Ans. Yes, sir; that is true.

2. Then when you spoke on direct examination of this discussion with regard to tearing up the streets, that was something outside of this petition which has been shown you marked Exhibit "19"?

A. Yes sir.

3. So far as you know is it not a fact that the company carried

out its representations and plans as to laying the pipes largely in the alleys in the populous parts of the city?

A. I think it did.

4. Who participated in this discussion with reference to the objections to tearing up the streets for pipes?

A. I don't know as I could name any one alderman outside of Mr. Powell; I remember of hearing him talk about it, but the
1090 question was discussed, as I remember it, on the floor of the council chamber and members talked the matter over among themselves.

5. At that time were any objections being urged by the citizens, so far as you knew, to the necessary disturbing of the pavement for the purpose of laying pipe?

A. There was not a single objection to my knowledge.

6. You gave as one of the reasons for your supporting the ordinance that there would be competition with the old company—if I understand you correctly that was the talk among the aldermen in the meetings of the council and their talk among themselves?

A. Yes sir; and the petition, I think, set forth that, and Mr. Miller stated that to me.

7. And those facts were the basis on which you expected the complainant company would act in competition with the old company?

A. Yes sir;

8. There were no further statements or conversations with reference to that so far as you now recollect?

Ans. No sir;

9. Did you have more than one talk with Mr. Miller?

A. Not to my knowledge.

10. Are you able to locate approximately the time when that talk took place?

Ans. No sir; I am not.

11. Where was it?

Ans. It was not in the council chamber proper; I think it was in the city clerk's office.

12. Was anything said at that time by Mr. Miller as to a definite price which his company expected to charge for gas?

Ans. No.

13. The conversation was simply a general one, was it not, and substantially as set forth in the petition, that the threat of competition had already reduced the price of gas and actual competition would probably give a further reduction—it was general talk of that character?

A. Those were about Mr. Miller's statements to me.

14. Examine Exhibit "19" and state whether all of the persons whose names appear signed to it were residents of Peoria?

1091 A. These are all Peoria men so far as I know.

15. Is it not a fact that the preliminary matter which was urged as a reason for granting the new company a franchise or license was that the application was made in good faith and that

they would go ahead and actually construct the plant. In other words that they were not obtaining an ordinance merely to sell out to another party—was not that a very large part of the discussion?

A. Well, I hardly think that is correct; that subject was discussed but it did not seem to be the main topic of discussion.

16. Was it not discussed to a very considerable extent?

A. It was discussed, yes sir.

17. Was not that one of the statements set forth in Exhibit "19" on which you relied in supporting the ordinance?

A. Yes sir.

18. The company did carry out that representation in that statement, did it not, and did construct a modern, up-to-daye plant so far as you know with a piping system extending through a large part of the city?

Ans. I did.

19. The time when you had the talk with Mr. Miller with reference to the fact it was Peoria people and Peoria property engaged in the project, was in this one conversation to which you have referred?

A. Yes sir, there was no other conversation with him about it to my recollection.

20. Was it not a subject of discussion at that time that the discourteous treatment and general indifference to customers shown by the old company might also be remedied by having competition in the field?

Ans. Yes sir.

21. That was discussed to a considerable extent, was it not?

1092 A. That was talked of by members and people who were interested and discussed by the press, I believe, and influenced the members in voting to some extent.

22. And did it not have considerable influence in determining the position of the council?

A. Yes sir, it had its influence.

Re-direct interrogatories by Mr. TICHENOR:

1. As you understood the situation at that time, what territory did the new company propose to occupy as compared with that already occupied by the old company?

Objected to as incompetent and immaterial, not the best evidence.

A. Well, I think about three fourths of the entire city; I don't know the exact territory.

2. Was it in the same territory or different territory than that occupied by the old company?

Objected to same grounds.

A. It was in the same territory.

DAVID E. POWELL, called on behalf of defendant, being first duly sworn, according to law, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. State your name and residence?
A. David E. Powell; Peoria, Ill.
2. How long have you resided in Peoria?
A. Over 50 years.
3. What is your business at the present time and what has it been in past years?
A. I am in no business at present; my profession is the
1093 law but I have not been in active practice for some years.
4. State whether or not you were a member of the city council at the time of the pendency and passage of the ordinance to complainant company?
A. I was.
5. For how long a time were you a member of the council?
A. For 2 years, from May, 1898, to May, 1900.
6. When with respect to the termination of your office was this ordinance passed?
A. I could not tell exactly but think it was one or two sessions before my term expired.
7. State whether or not as a member of the council you were familiar with the fact that the ordinance had been presented?
A. I was.
8. For how long a period of time, if at all, had you known the gentlemen who were then interested in the proposed new enterprise?
Ans. From 15 to 40 years.
9. Look at "Exhibit 19" now shown you and state whether or not you know all the gentlemen whose names are signed thereto and did at that time?
A. Yes, I knew each and every one of them and had for a great many years.
10. What did you know of their standing both financially and as to integrity in the city of Peoria?
A. I knew from my personal acquaintance with them and from what people generally said of them that they were men of financial standing and of integrity.
11. From the time of the presentation of the ordinance, did you know the gentlemen who were interested in it?
Ans. Yes.
12. What was your understanding, and so far as you know what was the understanding of the other members of the council,
1094 with respect to this being purely a Peoria enterprise?

Objected to as incompetent and immaterial.

A. That was the understanding so far as I talked with others; I don't remember of talking with every alderman but with those I

conversed and in conversations I had with others it was understo to be strictly a Peoria enterprise.

13. Did you know at that time that any gentlemen outside Peoria was interested, or was to become interested at any time, the future?

Objected to same grounds.

A. I didn't know at the time of the presentation of the ordinanc nor did I hear for sometime that anyone outside of Peoria was i terested or was to become interested in it.

14 What was the purpose of this company in obtaining a fra chise for the installation of a gas plant in Peoria so far as y understood it at that time?

(Objected to same grounds.)

A. As I understood it, it was to be of benefit to the public in t way of a material reduction in the price then being paid for gas.

15. What, if any discussions were had in your presence amor the members of the council upon that particular question?

Objected to same grounds.

A. We discussed the franchise on that point as there was no pr vision in the ordinance fixing the maximum price of gas.

18. State whether or not during the time the ordinance was pendin you were interviewed by any of the gentlemen interested in it, if s by whom?

A. I was; I was interviewed by Wm. T. Irwin, whom I was i formed was attorney for the parties, and by Theodore J. Miller, th promoter.

17. On how many different occasions did you convers
1095 with Mr. Miller on the question?

A. I could not state the number but it was more than hal a dozen times.

18. Do you know why he saw you a number of times with refer ence to the subject?

A. He saw me three times with reference to the ordinance another time I met him and the question came up incidentally.

19. What was your attitude with reference to this ordinanc when it was first presented to the council?

Objected to as incompetent and immaterial.

The MASTER: I don't think it material but the witness may answer subject to the objection.

A. I had formed no opinion about it when it was first presented I had to examine into it and read it over.

20. What statements or representations did Mr. Miller make to you with reference to what his company proposed to do if granted a franchise?

(Objected to same grounds.)

A. He said it would make competition in gas and a new company being here the price of gas would be cheapened to the public.

21. What if anything did he say with reference to his company being operated on an entirely independent basis without combinations of any character with the company then in operation in the Peoria territory?

(Objected to same grounds.)

A. I cannot recall the particular language that was used, but it was said generally it was a Peoria enterprise with Peoria men engaged in it and their character was such they would not do anything to render the company obnoxious to the public. That was the substance of it, I cannot recall the exact words.

22. State whether or not Mr. Miller urged you to support the ordinance?

(Objected to same grounds.)

A. Well, I could not say he urged me, but he asked me
1096 twice about it and I expressed my opinion to him about the ordinance; he urged me no further about it.

23. State whether or not at the time Mr. Miller made those representations to you you believed they were made in good faith and if a franchise or license were granted they would be carried ouy?

(Objected to as immaterial.)

A. I could not say I had any belief at the time of the first or second conversation he had with me; I was thinking the subject over.

24. What was your ultimate conclusion upon the question?

Objected to as immaterial.

A. My ultimate conclusion was that I would place faith in the representations made.

25. What, if anything, had the character and standing of the gentlemen interested to do in affecting your judgment?

Objected to as incompetent and immaterial.

A. It had all to do with it—the character of the individuals concerned.

26. Look at "Exhibit 19" in evidence now shown you and state whether or not that, or the subjects there in contained, were before you, and the other members of the council, during the time this ordinance was pending?

A. Yes sir, the matters were before us; I recollect the petition well.

27. State what, if any, influence the statement and representation embodied in that exhibit had with you in arriving at the course you would pursue and did pursue with reference to the ordinance in question?

(Objected to as incompetent and immaterial.)

A. They had a very great influence with me.

28. Did you or did you not believe that the statements and representations contained in "Exhibit 19" were true and if a
1097 license were granted, as asked, that those representations would be carried out in good faith?

(Objected to same grounds.)

A. I certainly believed they were true.

29. State whether or not the matters embodied in Exhibit "19" were substantially the same as the representations made to you by Mr. Miller in the conversations to which you have referred?

A. Substantially the same.

30. As you understood the situation at that time, who were to be benefitted by the granting of the ordinance in question and in what way?

(Objected to same grounds.)

A. The public in the way of a material reduction in the price they were paying for gas.

31. Did you know at that time what prices were then charged by the old company for gas?

Ans. I did.

32. And had you during your residence in Peoria or for a great many years?

Ans. Yes sir.

33. What territory, as you understood it, was the new company to occupy and operate in as compared with the territory then covered by the Peoria Gas Light & Coke Co.?

Objected to as incompetent, immaterial, not the best evidence.

A. My recollection is they were to occupy about the same territory; they had the frontage present on a number of the streets amounting to some 50 odd miles.

34. What part of Peoria and adjacent territory, where there was a demand for gas was then occupied by the old company?

Objected to same grounds as before.

A. The greater part of the city of Peoria, that is, where it was profitable to sell gas and extend their mains; I don't know how many miles of mains they had though.

36. What had the old company done, within your recollection, with reference to the extension of its mains and the expansion
1098 of its facilities for the production and distribution of gas?

Objected to same grounds.

A. So far as my observation extended, wherever there was a demand for gas they were extending their mains.

37. How long had the old gas company been in existence and

operating in this territory at the time the proposed ordinance came before the council?

(Objected to as immaterial.)

A. I think the old company was chartered in 1853 or 1854; they were operating here in Peoria in 1855 or 1856.

38. And had it been operating continuously ever since that time?

Ans. I had.

39. State whether or not for the past 25 years you have known, either personally or by general reputation, the gentlemen prominently identified with the management of the old gas company?

Objected to as immaterial and irrelevant.

A. I have.

40. What was their standing financially and otherwise in this community?

(Objected to same grounds.)

A. Their standing was good, both financially and as to integrity, so far as I know; I cannot recollect all of them.

41. Did you know Wm. A. Herron, Mathew Henebery, Leslie Robison and Mathew Griswold?

Ans. Yes sir.

42. How long have you known those gentlemen?

A. I have known Mr. Herron for over half a century; I knew Mathew Griswold before his death probably about the same length of time, have known Leslie Robison for about 40 years.

42. You knew Peter Coffey also in his lifetime?

Ans. Yes sir.

43. These gentlemen were all prominently identified with the old company at the time of the presentation of this ordinance and had been for many years, had they not?

1099 A. I cannot remember as to Peter Coffey, whether he was alive at that time or not, but all those gentlemen were prominently identified with the company.

Cross interrogatories by Mr. ABBOTT:

1. Referring to Exhibit "19" I think you said all of the persons who signed that paper are Peoria people?

Ans. Yes sir.

2. Are there any of the persons whose names are signed to "Exhibit 19" who are not still interested in complainant company?

A. I could not answer that, for I don't know whether they are interested in it now or not.

3. But so far as you know all of those persons whose names are signed to that paper are still interested in it?

A. They are, so far as I know.

4. Where did these three conversations you had with Mr. Miller take place, at which he sought you?

A. I could not say he sought me, but he met me at the city hall twice and once at the Pabst, or in front of the Pabst, and we walked into the Pabst.

5. The conversation- at those times, if I understand you, were substantially the same as the representation set forth in "Exhibit 19"?

A. Substantially the same with regard to objections I raised to the ordinance.

6. Did Mr. Miller at any of those conversations give you any definite promise or pledge as to the price his company would charge for gas if a franchise was given?

A. No sir, he did not.

7. The conversation was of a general character and covered substantially the same grounds as set forth in Exhibit "19"?

A. Well, it was of a general character coming from his
1100 request of me to support the ordinance.

8. And of the same general character as the representations in "Exhibit 19"?

Ans. Yes sir.

9. Was it not the subject of discussion in those conversations, and among the council generally, whether the company's application was made in good faith and they would really erect a gas plant and not merely procure the ordinance for the purpose of selling to another company.

A. That was a subject of conversation.

10. And was it not a fact that the representations that they would actually construct a gas works and not sell out had much influence in procuring the passage of the ordinance?

A. It certainly had; in my judgment; it was one of the inducements for my vote.

Re-direct interrogatories by Mr. TICHENOR:

1. You supported the ordinance and voted for it, did you?

A. I voted for it on its final passage.

2. And you have stated all your reasons why you supported it and voted for it?

A. I have stated my reasons why I supported it; the question was before the people; the people were interested and there seemed to be a demand from the people that the ordinance be passed.

SUMNER R. CLARKE, called on behalf of the defendant, being first duly sworn according to law, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. State your name, occupation and residence?

A. Sumner R. Clarke; my principal business is farming; Peoria, Ill.

1101 2. How long has farming been your business?
A. Very largely for the last 10 or 12 years.
3. How long have you resided in Peoria?
A. Nearly all my life.
4. In what other lines of business have you been engaged during your life?
A. In distilling—banking a little.
6. For how long a period of time were you engaged in the distilling business?
A. From 1870 up to 1888 I think; perhaps I was out of it for a year during that time, and since have went back into the same business within the last 4 or 5 months, since the death of my brother.
7. You became interested in your brother's distillery after his death?
Ans. I bought some stock in it.
8. Are you and officer of that corporation at the present time?
Ans. Yes sir, I am president of the company.
9. Your brother had been president in his life time?
A. Yes.
10. You were one of the persons originally interested in the formation of the complainant company, were you not?
Ans. Yes sir.
11. How long prior to the passage of the ordinance to your company did you take up the subject with the intention of becoming an interested party?
A. I think I had talked of it a year before.
12. Of this same enterprise?
A. Yes, but not with the same parties, I figured alone on it some.
13. When, so far as pertains to the organization which was ultimately effected did you take up the subject?
1102 A. I could not give the date without referring to the date of its charter.
14. Look at Exhibit "18" and state whether or not that refreshes your recollection with reference to the time?
A. This says March 18, 1899; I should say three months before that it was first talked over.
16. What were the circumstances under which the subject with you first arose?
(Objected to as incompetent and immaterial.)
A. I don't know as I remember what first brought it up; I think it was some talk I had with Mr. Miller.
17. Was it a subject which you introduced or was it introduced to you by somebody else?
(Objected to same grounds.)
A. I don't remember.
18. What was the nature of those initial conversations—what was the general character of the conversations at that time?

Objected to as immaterial and irrelevant.

A. It was with reference to getting up a new company; it was talked that we could give better service and make it more pleasant for the public in a good many ways, that we could treat the public better than they were being treated in their intercourse with the officers of the old company.

19. At that time what had been your experience, if any, in the gas industry?

A. None, except that I was in business beside the old gas company's works for 10 or 15 years and I naturally imbibed a little experience of it.

20. During that period how far was your place of business from the gas works?

Ans. Joined them.

21. Did you know at that time how long the Peoria Gas Light & Coke Co. had been operating in this territory?

A. Yes, I can remember as a boy but I would not know
1103 the exact time.

22. Had you ever been a stockholder, or interested party in any gas company prior to the time of the conversation to which you have referred?

Ans. No sir.

23. What if any knowledge had you of the cost of production and distribution of gas?

Ans. None.

24. What knowledge had Mr. Miller at that time that you knew of?

Ans. I don't think he had any in that regard.

25. How long had you known Mr. Miller?

A. I presume 25 years and perhaps longer.

26. Where was Mr. Miller's office at that time with respect to your office?

A. Mr. Hardin, Mr. Miller and myself had an office together.

27. For how long a period of time have you occupied the same office?

Ans. About 9 years at that time.

28. During the early negotiations between yourself and Mr. Miller, what, if anything, was considered by you other than the matters concerning which you have already testified, so far as pertains to the advisability of engaging in the gas business in Peoria?

Objected to as immaterial and irrelevant.

A. I don't remember only in a general way where raw products are bought chiefly you can form some idea whether a business will pay if properly conducted and managed.

29. Were you at that time acquainted with the gentlemen prominently identified with the management of the Peoria Gas Light and Coke Co.?

Ans. Yes sir.

30. How long had you known them?

A. I had known most of them, with the exception of Coffeys and Farrelly, all my life.

31. What was their standing and reputation in the community both financially and otherwise?

1104 A. There has always been some complaint with reference to Tom Coffey's treatment of people who came in contact with him in a business way, but financially they all stood well.

32. Is it not true that they were among the strongest men in Peoria financially and stood well in the community generally?

A. Oh, they stood well financially, but they were not aggressive, they were not progressive at all; within the last 10 years they were not what you would call progressive men.

33. Did you at that time know what territory was covered by the operations of the old company?

Ans. Fairly well.

34. What portion of the available Peoria territory was then being supplied by that company?

Objected to as immaterial and irrelevant.

A. I think there was a good deal of outside territory that was left out that should have had some attention; the inner part of the city was well supplied with pipe.

35. State whether or not you then knew, or understood, the capacity of the old company's plant with reference to the demand in the territory in which it was operating?

Objected to as incompetent and immaterial.

A. No, I didn't know.

36. During the time you were engaged in business in the immediate vicinity of the old company's gas plant, state whether or not there had been any expansions or additions to its operating facilities?

(Objected to as immaterial.)

A. I had seen some building going on at different times.

37. State whether or not during that period that company had erected a very large gas holder?

(Objected to as immaterial.)

A. I don't think that large holder was erected while I was in business next them; I think it was erected afterwards.

38. You knew of it did you?

1105 A. Not personally but had heard it talked of and probably had seen it.

39. What knowledge had you regarding its capacity as compared with the demand for supply in the territory occupied by the old company?

(Objected to as immaterial and irrelevant.)

A. I had none whatever.

40. What, if any, personal knowledge had you as to the nature of the equipment of the old gas company either during the time you were in business on the adjoining premises, as you have stated, or later?

(Objected to same grounds.)

A. I had none.

41. Was Theodore J. Miller the first person to suggest to you the question of entering this territory for the purpose of competing in gas production—I am speaking now with reference to those negotiations which led up to the organization of the complainant company?

(Objected to as immaterial.)

A. I don't know that I can answer that question; I think he was the only one I had talked with.

42. At that time were you familiar with Mr. Miller's financial condition?

Ans. Fairly well.

43. What was his financial condition at that time with respect to conducting an enterprise of the magnitude of the one proposed?

(Objected to as incompetent and immaterial.)

A. I don't think he could handle a deal of that kind without assistance.

44. State whether or not he was at that time in a position financially to lend any material aid to such an enterprise?

Objected to same grounds.

A. He was.

45. On his own account?

(Objected to same grounds.)

A. Of his own ability.

1106 46. I am speaking of his own financial ability?

A. No, I think not, still I do not know positively.

47. Your best judgment is he was not?

Ans. Yes sir.

48. What was the plan as proposed by Mr. Miller for procuring the capital necessary for the establishment and prosecution of an enterprise of that character as outlined to you in the early portion of your negotiations?

Objected to as immaterial and irrelevant.

A. To get up a stock company.

49. Where?

Ans. Here in Peoria; I don't know that that part was talked of, it was to get up a stock company; that is usually an after consideration.

50. When that feature of the case took shape, from what source was it proposed by you and Mr. Miller to obtain subscribers to the necessary capital stock?

Objected to as immaterial and irrelevant.

A. I don't think it was talked over at the time, although it might have been, I don't remember; that is, at the beginning of the enterprise I am speaking of now.

51. My question embodied also the time when that feature of the case began to take shape—the question of procuring stock subscriptions for the purpose of obtaining necessary funds?

A. It was very soon after that.

52. Where was it proposed to get those stock subscriptions?

Objected to as incompetent, immaterial and irrelevant.

A. I don't remember whether that was talked over at that time or not.

53. Either at that time or subsequently, where was it proposed to obtain the necessary capital?

A. It was proposed to interest some Peoria parties and some outside parties.

1107 54. Who, if anyone, besides yourself and Mr. Miller had to any extent participated in these preliminary negotiations at the time the subject of financing the concern came under consideration?

Objected to same grounds as last stated.

A. I don't remember when that was taken up; Mr. Walsh's name was mentioned and I don't remember at what time Mr. Little's name was mentioned.

55. In the beginning of your negotiations with Mr. Miller, what were the discussions and what were the intentions of both of you with reference to making this purely a Peoria enterprise?

Objected to as incompetent and immaterial.

A. I don't remember; in getting up a stock company, you usually consult your moneyed friends and it is pretty hard to get up a stock company in Peoria or interest people at all in anything of that kind and in a large undertaking it is very often necessary to go outside.

56. What was the fact in this particular case and when did that fact develop?

(Objected to same grounds.)

A. I don't remember.

57. State whether or not it was also the intention of yourself and Mr. Miller to procure and interest outside capital in this enterprise?

(Objected to same grounds.)

A. I don't think it was talked over when we first talked it over, although it may have been; I don't remember.

58. Was that the fact when the subject of financing the concern first came up?

(Objected to same grounds.)

A. I don't remember.

59. How frequently did you and Mr. Miller discuss those questions between yourselves?

A. I think having an office together we talked it over quite frequently.

1108 60. To what extent, if at all, did the question of prospective profits enter into your becoming interested in the proposals which he suggested?

(Objected to as immaterial and irrelevant.)

A. I don't remember.

61. Was it to you a matter of any consideration as to whether or not the enterprise would be profitable or otherwise?

A. Yes sir.

62. State whether or not advantages to the city of Peoria and its citizens were a subject of consideration by you and Mr. Miller?

Ans. Yes sir.

63. State whether or not prior to the time the stock subscription list for your company was made up you or anyone else, then interested or proposing to become interested, sought financial assistance outside of Peoria?

Objected to as immaterial and irrelevant.

The MASTER: I don't see the materiality of that but the witness may answer subject to the objection.

A. I talked it over with John R. Walsh of Chicago and Mr. Little.

64. Were you the first person to present the subject to Mr. Walsh?

(Objected to same grounds.)

A. I don't know whether it was myself or Mr. Little; I don't know which of us saw him first.

65. How long had you known John R. Walsh?

A. I don't remember; I had known of him a good while.

66. Were you personally acquainted with him before that time?

A. I think I had met him about 3 or 4 months before this matter came up, but he knew of me and I knew of him quite well in other matters.

67. What were the special circumstances which induced you to approach Mr. Walsh upon financial questions connected with the proposed organization of this company?

1109 Objected — as immaterial and irrelevant.

The MASTER: I do not see the materiality of it but the witness may answer subject to the objection.

A. He was reported to be a very wealthy man and a man that was willing to take hold of an enterprise of this kind if it were to be properly managed.

68. Did you at that time know whether or not Mr. Walsh was interested in gas inductries elsewhere?

(Objected to same grounds.)

A. Not to my personal knowledge.

69. You had been informed of that had you not?

Objected to same grounds.

A. I had heard it, yes sir.

70. State whether or not, you knew at that time Mr. Walsh was an interested party in the old gas company in Peoria.

Objected to as incompetent and immaterial.

A. I don't know whether I knew it at that time or not; I heard of it some time, but whether I knew it then or not I could not state.

71. How intimate, during the period covered by your acquaintance with Mr. Walsh, had you been with him either socially or in a business way?

A. I don't know; Mr. Walsh seemed to treat me in a very frank way from the start and always has; I don't know for what reason, but he seemed to have a good deal of confidence in anything I suggested to him.

72. In what other lines of business, if any, had you previously been associated with Mr. Walsh?

A. In none. In the first part of my testimony, I neglected to state that I have been very largely interested in the Central railway here and while interested in the Central Railway Company Mr. Walsh's name was brought to my attention; I think that was
1110 the first time I ever heard of him.

73. When was it that you were largely interested in the Central Railway Company, as you have stated?

A. In 1889 until about 1895 or 1896.

74. Was in that in the line known as the Rapid Transit, or Sixth Avenue line in Peoria?

A. No sir, in the whole system.

75. Was Mr. Walsh a stock holder in that company at any time, or in any way interested in it?

Ans. No sir.

76. Up to the time you called on Mr. Walsh, as you have testified, have you ever transacted any business with him either directly or indirectly?

A. No sir. I think indirectly my name was used in connection

with this railway at that time by another party but I had no personal business with him: he knew who I was.

77. Was the suggestion of the advisability of interesting Mr. Walsh made to you by anyone else or was it an idea of your own?

Objected to as immaterial and irrelevant.

A. Of my own.

78. Are you able to state at this time how many people in Peoria had manifested an intention to become interested, or had participated in your negotiations, prior to the time of this interview with Mr. Walsh?

(Objected to same grounds.)

A. No, I think not.

79. No one except yourself and Mr. Miller?

A. Except myself and Mr. Miller.

80. What inducement at that time, if any, did you hold out to Mr. Walsh touching the subject of his becoming an interested party?

(Objected to as incompetent and immaterial.)

The MASTER: I don't think it material but the witness may answer subject to the objection.

1111 A. It was simply talked over as a business proposition that would pay.

81. From your conversation with Mr. Walsh on that occasion, did you understand that he was a man skilled in the gas industry?

(Objected to same grounds.)

A. I don't remember; I know the question was asked whether I knew that he had been interested in gas companies; I knew it either before or after that time but I don't remember which now.

82. Did you know from anything he said at that time whether or not he was then familiar with the gas situation in Peoria?

Objected to same grounds.

A. I don't remember; in talking over matters of that kind, the question of population is usually the main question.

83. Who was with you at that time, if anyone?

Objected to as immaterial.

A. I don't remember.

84. You don't remember at this time whether Mr. Miller was with you or not?

A. I don't think he was with me; Mr. Little may have been with me but that I don't remember.

85. State what particular question, or what particular subjects, were discussed between you and Mr. Walsh at that time and what

those discussions were so far as pertained to the proposed organization?

(Objected to as immaterial and irrelevant.)

A. The question of population and the question as to the amount of gas that was being used here.

86. State whether or not prices were also considered at that time?

(Objected to same grounds.)

A. I don't remember.

87. Did you then know the rates at which the old company was furnishing gas, both for fuel and illumination?

1112 A. I think I did, yes sir.

88. Are you able to state at this time whether you informed Mr. Walsh regarding that?

A. No, I could not say positively; the chances are it was talked over but I don't remember.

89. State whether or not at that time there was any discussion between you and Mr. Walsh with respect to the probability of a new company being able to obtain sufficient business against the old company to make it profitable in this territory?

Objected to as immaterial and irrelevant.

A. I presume it was; I don't remember positively, but it naturally would be.

90. Did you at that time learn what experience Mr. Walsh had had in the gas business?

A. I did not; I don't know whether the question came up and I didn't care; a man of his business experience easily knows pretty well whether a business can be conducted fairly profitable or not if he knows the population of the city and the price of raw product.

Defendant objects to all of the foregoing answer except the first sentence thereof as not responsive and moves the court to exclude it.

91. To what extent at that time did you undertake to interest Mr. Walsh financially in this enterprise?

Objected to as immaterial and irrelevant.

A. I don't remember exactly.

92. Did you at that time have any knowledge or information as to how largely Peoria capital would become interested in the enterprise if it obtained a footing here?

(Objected to same grounds.)

A. No I did not.

93. State whether or not any effort had been made to ascertain that fact?

1113 A. I think not except so far as my own efforts were concerned.

94. At that time had the matter taken such shape you knew substantially the amount of capital that would be required for the undertaking?

A. I don't remember whether it had been talked over or not.

95. From what source did you first obtain information as to the magnitude of the investment necessary for such an undertaking?

Objected to as immaterial.

A. I think it was talked over with Mr. Walsh and perhaps with Mr. Little; I don't remember with which one first.

96. Was Mr. Little present in Chicago at that time?

A. I don't remember.

97. When did you become acquainted with Francis W. Little, the president and manager of complainant company?

A. At Sioux City, Iowa, about June, 1888.

98. How intimately had you been acquainted with him during the period covered by your acquaintance?

A. Not at all in a business way; socially I was quite well acquainted with him and I might say to a certain extent in a business way; he was interested in land and loaning money at that time and I think I had talked over those matters with him.

99. Where was he located?

Ans. In Sioux City, Iowa.

100. Do you know when he left Sioux City?

A. Not exactly.

101. Do you know when his experience in the gas business began?

A. No sir.

102. Was he interested in that at all at the time you first knew him?

Ans. Not to my knowledge.

103. State whether or not at the first interview with Mr. Walsh, to which you have referred, there was an agreement or understanding had between you as to the extent he would become interested
1114 in the event the enterprise proceeded?

Objected to as incompetent and immaterial.

The MASTER: I don't see the materiality of it but the witness may answer subject to the objection.

A. My remembrance is at the first interview he simply asked me if I was willing to put money into it myself and I told him I was.

104. Did you at that time make known to him the extent to which you proposed to invest?

(Objected to same grounds.)

A. I don't think that was talked over at the first meeting.

105. State whether or not there was any discussion between you as to the amount of money that would be required for such an undertaking—I mean at that meeting?

Ans. I don't remember.

106. Did he or not on that occasion tell you he would furnish a portion of the funds necessary for the enterprise in the event it could be inaugurated?

Objected to as incompetent and immaterial.

A. He gave me to understand that he would, as I remember.

107. Are you able to state about how long that was before your company was incorporated?

A. I think I said it was 3 or 4 months; it would be merely guess work, it might be two or more months.

108. How long was it before you again saw him on that subject?

A. I don't remember.

109. How many times did you confer with him upon those questions prior to the making up of the subscription list for your company?

Ans. Three or four times.

110. State whether or not prior to the time the subscription list was made up there was any definite understanding between you and Walsh as to the extent to which he would become interested in the new enterprise?

1115 Objected to as incompetent and immaterial.

The MASTER: I do not now see the materiality of it, but it may become material. The witness may answer subject to the objection.

A. I think I talked over with him what I thought my Peoria friends would take and he said he would take the balance.

111. To what extent was he to become interested with reference to the total amount of the capitalization?

Objected to same grounds.

A. I don't think any exact amount was talked over; I think I gave him to understand I could get at least one third of it taken here in Peoria.

112. And was it then your understanding from what he said that he would furnish the remainder of the capital?

Objected to same grounds.

A. He said he would take what the Peoria people did not take.

113. What was the arrangement, if any, prior to the making up of the subscription list with reference to the stock he was to get? I don't mean in amount but what stock he was to get?

Objected to as incompetent, immaterial and already answered.

A. I don't think I can answer it more fully than I have.

114. Was it then understood that he was to sign the subscription list for the stock which he later would get?

Objected to as incompetent and immaterial.

The MASTER: I do not see the materiality of it but he may answer subject to the objection.

A. It was not mentioned.

115. What arrangement or understanding with Mr. Walsh was there in making up the subscription list with reference to what stock should go to him?

(Objected to same grounds.)

The MASTER: I do not see the materiality of it but he
1116 may answer subject to the objection.

A. I think it was understood at that time that the Peoria parties would take about one third and he would take the balance.

116. Was it also understood he should sign the subscription list for the stock he proposed to take?

Objected to same grounds.

A. That was not talked over at all.

117. What was the reason why he did not become an original subscriber to the capital stock, if you know?

Objected to same grounds.

A. I have forgotten the exact reason, but for some reason the papers were wanted that day at one o'clock; either Mr. Irwin or his partner wanted to go to Springfield and take the papers with him; the papers were given to me, I think, about nine o'clock in the morning and I wanted to get every subscription between that and one o'clock.

118. How many weeks or months had that matter been pending at the time to which you refer?

(Objected to as immaterial.)

A. I don't remember.

119. Had it been for some months?

A. This question of subscription?

120. Yes and the preliminary arrangements necessary for the incorporation?

A. The papers had not been gotten up—it seems to me they were finished the night before and I got them the next morning.

121. How long had the preliminary arrangements then been in progress. I mean with reference to the preparation of your papers and making the necessary arrangement for procuring your final certificate of incorporation?

Ans. I don't remember.

122. You knew from the first that the stock subscription list must be completed before you could get your certificate, did you not

1117 A. That was what I understood; if I remember right the incorporation papers are first gotten out, then the subscrip-

tion afterwards; the incorporators and subscribers are not necessarily the same parties.

123. No, the people applying for the license to incorporate are not necessarily stockholders. Was it your intention from the first to subscribe for the amount of stock which you did actually subscribe for?

(Objected to as immaterial.)

The MASTER: I do not see the materiality of it but the witness may answer subject to the objection.

A. With the view of carrying that large an amount?

124. Yes.

Ans. No, that is, I did not sign with the intention of carrying that large an amount of the stock.

125. What were the circumstances under which you subscribed for so large a proportion of the stock?

Objected to as incompetent and immaterial, and already answered.

The MASTER: I think it has been substantially answered but the witness may answer more fully if he can.

A. As I said before, we were anxious to get the papers off so as to have them go on the train to Springfield at one o'clock; Mr. Walsh was not here so I subscribed for the balance that was not taken by the other Peoria parties. I don't remember the amount.

126. State whether or not there was previously an agreement between you and Mr. Walsh to the effect you should subscribe for all the remainder of that stock and he would take a portion of it when the stock was actually issued?

Objected to as incompetent and immaterial.

The MASTER: I don't see the materiality of it but the witness may answer subject to the objection.

A. There was.

127. Was that agreement definite with reference to the
1118 amount of stock he was to receive?

(Objected to same grounds.)

A. I think it was understood by that time that the Peoria parties would take about one third and he would take the balance.

128. State whether or not that arrangement was carried out when the stock was issued?

(Objected to same grounds.)

A. Virtually, I think about that way.

129. How much of the stock, which you subscribed, was actually issued to Mr. Walsh, or to anyone for him?

Objected to same grounds.

The MASTER: I do not see the materiality of it but the witne may answer subject to the objection.

A. I don't know.

130. What official connection, if any, with the company have yo had since its organization?

Ans. President of the company.

131. State whether or not you attended the meeting of the sul scribers to the capital stock to prepare for obtaining your final ce tificate?

Ans. It is my remembrance that I did.

132. Who of the subscribers were present at that time?

A. I think they were all present except my brother Charles, an he may have been there; I think he was come to think of it, but am not positive about that, and if he were not my brother Chaun cey had power to sign as attorney.

133. Was any business transacted at that meeting other than thos formal matters pertaining to the papers to be filed with the secre tary?

Ans. None that I remember.

134. Preceding the day on which that meeting was held, what, i any, arrangement was made with reference to the persons wh would compose the directory?

(Objected to as immaterial.)

A. I will have to change my answer to the previous question be fore answering this one. It seems to me it was talked over at the previous meeting as to who should compose the directors; I was asked to take the presidency of it but did not want it and
1119 they insisted on my taking it. In answer to the last question I will say I don't remember of any talk.

135. Who named the members of the board?

Objected to as incompetent and immaterial.

A. That I don't remember.

136. Did you know prior to the meeting at which they were voted for who they were to be?

(Objected to same grounds.)

A. I cannot remember what was done; those matters are usually talked over and an understanding in some way is arrived at and I think it was so in that case, but I don't remember definitely any thing about it.

137. What, if anything had Mr. Walsh to do with the naming of the directory?

Objected to as incompetent and immaterial.

A. I don't remember that he took any part in it.

138. Was Mr. Walsh present as that meeting?

Ans. No sir.

139. Did he have a personal representative at that meeting?

Objected to as incompetent and immaterial.

A. Mr. Little and myself were in pretty close touch with Mr. Walsh and it may have been Mr. Little or myself; I don't remember which; there was no controversy about it.

140. State whether or not at that time you understood that Mr. Little or yourself, or both of you, were authorized to speak for Mr. Walsh so far as pertained to any matters coming before that meeting?

(Objected to same grounds.)

A. Why I did in a way.

141. State whether or not prior to that meeting you had submitted to Mr. Walsh the names of those you proposed to offer as members of the directory?

(Objected to same grounds.)

A. I don't remember of submitting any names.

142. How recently, at the time of that meeting, had you seen Mr. Walsh personally?

(Objected to same grounds.)

1120 A. Oh, I don't know, it might have been two or three weeks, it might have been less; I should say within two weeks perhaps.

143. How frequently were you in communication with him at that time?

(Objected to same grounds.)

A. I think I answered that I was in Chicago three or four times; I do not think I ever wrote him anything with reference to it.

144. Were the gentlemen selected at that meeting all residents of Peoria?

A. I could not tell you without refreshing my memory.

145. Look at "Exhibit 18" now shown you and state whether from that you can answer the question?

A. Yes sir, they were all residents of Peoria.

146. Those gentlemen were all present at that meeting, were they?

Ans. That is my remembrance, yes sir

148. How long did the directory remain as created at that time?

Objected to as immaterial.

A. I don't remember.

148. Do you remember whether all of those gentlemen served their full term or not?

Ans. I think not.

149. Who were the first to retire, if you remember?

A. Mr. Miles and Mr. Bailey.

150. Did they retire at the same time?
A. That is my remembrance.
151. Do you know the circumstances under which their retirement was brought about?

(Objected to as incompetent and immaterial.)

A. I cannot answer that without going to the records; I do not remember definitely enough to state.
152. Do you know the circumstances which led up to their severing their connection with the directory?

Objected to same grounds.

1121 A. I would have to refresh my memory from the records.
153. State if you know how long prior to the time they retired the subject first came up for consideration, either by you or by anyone else connected with the company?

Objected to same grounds.

A. I cannot answer it, I don't remember.
154. Were you present at the time of their retirement?

Objected to same grounds.

A. I think I was.
155. State whether their resignations were voluntary or involuntary?

(Objected to same grounds.)
The MASTER: Are you asking for the knowledge of the witness?
Mr. TICHENOR: Of course, so far as he knows.
The MASTER: He may answer.

A. They were requested to resign.
155. Who requested them?

(Objected to same grounds.)

A. I don't remember.
156. With whom did that request originate?

Objected to same grounds.

A. I don't remember.
157. State whether or not there had been any difficulty or antagonism among the member of the board of directors up to that time?
Ans. None at all.
158. Do you know why Mr. Miles and Mr. Bailey were requested to resign?

(Objected to as immaterial and incompetent.)

A. I cannot answer that without looking over the records; there was a reason; there was no controversy about it at all.
159. Do you know whether or not the records of your company show the reason for requesting those resignations?

Objected to as immaterial and irrelevant.

A. They would not show the reason.

1122 160. Would the records show the source from which the request came?

(Objected to same grounds.)

A. No.

161. Do I understand you to testify at this time that you have no knowledge as to the source of either of those requests?

Objected to same grounds.

A. I think, if I read the minutes, it would refresh my memory; there was a reason for it but I don't recall it.

162. Were either of the two gentlemen named in any way obnoxious to other members of the directory or were there personal reasons of another character against them within your knowledge?

Objected to same grounds.

A. None whatever.

163. Do you know whether or not the subject of their resignation was broached prior to the meeting at which they were requested to resign?

Objected to as immaterial, incompetent and already answered.

A. I don't know whether it was talked over with them before or not.

164. When, with reference to the time of that meeting did you first know that such resignations would be made?

Objected to as incompetent and immaterial.

A. I presume I knew it at the time of the calling of the meeting.

165. Was that a special or regular meeting at which they resigned?

Ans. My remembrance is it was a special meeting.

166. And was it called for that particular purpose?

Objected to as immaterial and irrelevant.

A. I don't remember.

167. Do you at this time remember any other business transacted at that meeting?

Ans. No sir.

1123 168. Do you remember who actually requested the gentlemen to present their resignations?

Objected to as incompetent, immaterial and already answered.

A. My remembrance is Mr. Little talked with the gentlemen.

169. Was Mr. Little at that time a member of the board?

A. That I don't know.

170. If he was, whom had he succeeded?

A. I could not tell you without referring to the records.

171. Is it not your recollection that Mr. Bailey and Mr. Miles were the first to retire from the directory?

Objected to as immaterial and irrelevant.

A. Yes sir.

172. If that were so, do you know the circumstances under which Mr. Little was present at that board meeting, or what called him there?

(Objected to same grounds.)

A. I don't remember.

173. Had you called him there?

(Objected to same grounds.)

A. I could not say.

174. Was it customary for him to attend the meetings of the board prior to the time he became a director, if he did subsequently?

Objected to same grounds.

A. I don't know; I don't remember; our offices were very close together and we were together a good deal but I don't recall whether he was in the habit of attending meetings of the directors or not. Mr. Little is a man who never forces himself where he don't belong.

175. To the best of your recollection, had the Peoria office of your company been established at the time those gentlemen resigned from the board?

Ans. Yes sir.

175. How far was it, as originally located, from your office?

A. It joined my office; I am not sure but what some of
1124 the meetings were held in my office before their office was ready—that they made their office there.

177. When, with reference to the time of your organization, did Mr. Little take up his residence in Peoria?

A. It would be guess work for me to answer that question; do you mean to bring his family here?

178. Well when he himself came here to remain—spent his time here?

Ans. He came here before this organization or about that time; he had been here before but had not settled down here.

179. Did you at that time know in whose interests he was here?

A. Yes sir.

180. Whose?

(Objected to as incompetent and immaterial.)

A. He represented Mr. Walsh.

181. When were the vacancies caused by the two resignations mentioned filled?

Ans. I think they were filled that day.

182. How were they filled—by appointment or election?

Objected to as immaterial and irrelevant.

A. My recollection is it was by election of the board.

183. Who were their successors?

A. I think Mr. Little and my impression is Mr. Walton, but I would have to look at the records to be sure as to that.

184. Who is this Mr. Walton to whom you refer?

A. He lives in Chicago.

185. Do you know him as being identified with any of Mr. Walsh's interests, if so what?

A. Yes sir, he is vice president and manager of the Equitable Trust Company, of which Mr. Walsh is president.

186. Do you know why Mr. Little was elected a member of the board in the place of either of the gentlemen who resigned?

Objected to as incompetent and immaterial.

A. I have no personal knowledge.

1125 187. Do you know why Mr. Walton was elected in the place of either of those gentlemen?

(Objected to same grounds.)

A. No sir.

188. Who named them as members?

Ans. I don't remember.

189. Were you present at that meeting?

Ans. Yes sir.

190. And participated in the election, did you not?

A. Yes sir.

191. How long in advance of that meeting did you know those gentlemen were to succeed Messrs. Miles and Bailey, if at all?

Objected to as incompetent, immaterial and already answered.

A. I don't remember how long.

192. State if it is not a fact that you knew that before Messrs. Bailey and Miles were originally elected members of the board?

(Objected to as incompetent and immaterial.)

A. Yes sir, I knew it was talked of.

193. Who was the next of the original members of the board to retire, if there were any further retirements?

A. I think Mr. Corning.

194. How long after the time of the resignation of the other two gentlemen did he retire?

A. I should say two years; along about 9 or 10 months ago.

195. Who was elected to fill the vacancy caused by Mr. Corning's resignation?

Objected to as incompetent, immaterial and relating to matters that took place after the commencement of this suit.

A. I don't remember whether it has been filled or not.

196. State whether Mr. Walsh has ever been a director of that company?

Ans. I think not.

197. How many meetings of the board has Mr. Walton attended since his election?

Ans. I don't know.

198. Have Mr. Walton and Mr. Little both been members continuously from the time of your election as stated to the present time?

1126 A. I could not answer that without reference to the records; I have been away a good deal and have been absent from a good many of the meetings.

199. Will you refresh your recollection or otherwise as to the various matters concerning which you have been examined and be prepared to testify in regard to them at a later date?

Ans. Yes sir.

200. When did Mr. Little become a stockholder in your company, if at all?

Ans. That I could not answer without referring to the records.

201. Is he a stockholder?

A. I think he is quite a large stockholder.

202. Do you know whether or not Mr. Little has paid the assessments levied against the stock he holds so far as they have been made?

(Objected to as incompetent and immaterial.)

A. I don't know.

203. When, with reference to the organization of your company, did he become a stockholder?

(Objected to same grounds.)

A. I don't know.

204. Whose stock did he get?

(Objected to same grounds.)

A. I don't know.

205. When did Mr. Walton become a stockholder?

A. That I cannot answer.

206. Do you know whether he is a large or small stockholder?

Objected to as incompetent and immaterial.

A. I don't know.

207. Do you know where he purchased his stock?

Objected to same grounds.

A. No sir.

208. State how many of the gentlemen, whose names appear on the subscription list, received the stock for which they subscribed to the extent of their several subscriptions?

1127 Objected to same grounds.

A. I don't know, except so far as the records show and my own stock.

209. Did you, as president of the corporation, affix your official signature to all certificates issued?

A. Not necessarily so; I could not say without looking on the stock book.

210. Have you any recollection now as to whether or not you did as president sign the stock?

Ans. No sir, I have not.

211. At or about that time were you president of any other corporation in Peoria?

Ans. I think not.

212. Who has been your vice president from the organization to the present time, if you have had one?

A. I would like to have the question put to me later when I have refreshed my memory from the records.

213. You have a vice president, have you?

Ans. Yes sir.

214. State whether or not stock certificates in your company have been issued to Mr. Walsh in conformity with the agreement, testified to by you earlier in your examination, to the extent to which he was to become interested in your company?

Objected to as incompetent and immaterial.

A. That I could not tell without refreshing my memory.

215. What, if anything, did you have to do with procuring the necessary frontage?

A. Nothing except to sign for the frontage I had control of.

216. Who had charge of that work?

Ans. Theodore Miller.

217. Did you know what persons were employed in that work?

A. I did at the time.

218. When was that work done with reference to the time you received your final certificate of incorporation?

A. I think three or four weeks; it extended over that period.

1128 219. How many men were employed in that work?

A. From 10 to 12; I don't think more than 12.

220. How many other men were employed in any work preliminary to procuring your license from the city?

A. I don't remember of any.

221. Did your company have an office at that time?

A. Mr. Miller made his office in the back part of the building occupied as an office.

222. Who employed the men?

A. Mr. Miller hired them and I paid them.

223. At whose request or suggestion did you pay for those services?

(Objected to as incompetent and immaterial.)

A. I don't think it was anybody's suggestion; I paid it on my own account.

224. And from your own fund?

Ans. Yes sir.

225. Who among the persons interested, or to become interested, if anyone, agreed to re-imburse you in whole or in part for any such outlay?

(Objected to as incompetent and immaterial.)

A. As I remember it, this money that was spent for frontage Mr. Walsh and myself agreed to advance, and there was no promise to pay it back or any understanding it was to be paid back at that time.

226. About what was the magnitude of those disbursements up to the time of the organization of your company?

Objected to same grounds.

A. It might have been $700. or $800.—somewhere in that neighborhood.

227. To whom was intrusted the duty of securing a site for the location of the gas house and other buildings—the manufacturing plant?

(Objected to as immaterial.)

A. It was in the hands of Mr. Little and myself very largely.

228. Under whose directions, if under anyone's, were you
1120 operating with respect to that?

Objected to as incompetent and immaterial.

A. I don't remember whether it had ever been talked over at a meeting or not, it was generally understood between Mr. Walsh, Mr. Little and myself who were the active workers at the time.

229. That you and Mr. Little were to have charge of that matter?

A. Yes sir.

230. When was that with reference to March 21, 1899, the date of your incorporation?

(Objected to as immaterial.)

A. Nothing has been done, as I remember, only to talk over the location at that time.

231. Then the selection and work you did in connection with it was done after that date?

A. There had been some work done before with no authority, that is, we had looked around ourselves for a location and after our organization—Interrupted.

232. State whether or not any limitation was placed upon the amount of the investment that was to be made in the real estate upon which the plant was to be constructed?

Objected to as incompetent and immaterial.

The MASTER: It may be material in one view of the case, and the witness may answer subject to the objection.

A. I don't remember.

233. Have you anything in your possession, or are there any records of the company, that would throw any light upon that question?

Ans. Not that I remember of.

234. Who dictated the price that should be paid for the ground?

Objected to as incompetent and immaterial.

A. I don't think any one person dictated it, but Mr. Little and myself probably had more to do with it than anyone else; I think it was talked over among the directors.

1130 235. Would any action of that character be made a matter of record by your secretary?

Ans. I hardly think so; there might be something of record with reference to the purchase when it was made confirming it but I don't remember whether there was or not.

236. When with reference to the purchase of the ground, were estimates furnished for the manufacturing plant, if any such were furnished?

(Objected to as incompetent and immaterial.)

A. I don't remember.

237. State whether or not you ever saw any estimates for the various buildings?

(Objected to same grounds.)

A. I don't remember.

238. Did you or did you not see plans and specifications for the various buildings?

A. Yes sir, I saw plans and specifications.

239. Who prepared them?

(Objected to as immaterial.)

A. I cannot give the name.

240. Was it a Peoria architect?

(Objected to as immaterial.)

A. I don't remember.

241. Would your records show?

A. I hardly think so; the company had an engineer in its ploy who did some of the work; it was done in pieces by differ men.

242. What is your present recollection as to whether or not plans and specifications were prepared in Peoria or in Chicago?

Objected to as immaterial.

A. I think most of them were prepared here; I don't know t any of them were prepared in Chicago.

243. Who, if any one, connected with your company had cha of their preparation so far as that work was done in Peoria?

A. Mr. Little.

244. To whose supervision was entrusted the matter of fixi the size of the different buildings that were to enter into t

1131 construction of the operating plant?

Ans. Mr. Little.

245. What if anything had you to do with it?

A. Nothing whatever.

246. State whether or not those matters were brought before t board of directors at its various meetings?

A. I think not; they may have been talked over some but I do remember of their being brought before them in detail.

247. State whether or not any building committee of the boa was appointed?

Ans. No sir.

248. Did you at that time know what experience Mr. Little ha had in the construction of gas plants?

Ans. I knew something.

249. Did you know whether or not he had ever previously supe intended such work?

Ans. From hearsay.

250. Where had he been immediately prior to locating in Peori in connection with the work in question?

A. Akron, Ohio.

251. Did you at that time know how long it had been since Mr Little first took up the subject of gas as a business?

A. No sir.

252. State whether or not Mr. Little presented to you personally or to your board an estimate of the expense of the installation of complete plant of the character which your company proposed t build in Peoria?

Ans. I don't remember that he did.

253. State whether or not he at any time prior to the construction outlined to you the various buildings that would be necessary fo such a plant, giving their sizes, capacity, etc., or whether he pre sented that subject to the board in any form?

A. It was talked over but whether he presented a detailed plan or not I don't remember.

254. Did you at that time know the magnitude of the plant that was to be constructed with respect to the total demand for gas in Peoria?

(Objected to as incompetent and immaterial.)

1132 A. No sir.

255. When did you for the first time obtain information as to the capacity of the plant either proposed or as constructed, as the case may have been?

A. I obtained some information from Mr. Little in general talk with him at times.

256. When with respect to the time the work was being done?

A. I don't remember; I presume it was talked over both before and after.

257. State whether or not you or your board up to the time the work of construction began knew what size plant was to be installed as compared with the demand for gas in the Peoria territory?

(Objected to as incompetent and immaterial.)

A. I did not pay much attention to it; that was left almost entirely to Mr. Little as the practical man.

258. Did you during the period you were preparing to incorporate and to build, know the length of time that Mr. Little had been associated with Mr. Walsh in the gas business?

Objected to as immaterial.

A. Not exactly.

259. Did you know in a general way?

Ans. Yes sir.

260. How long as you then understood it?

Objected to as incompetent and immaterial.

A. Three or four years.

261. During the period of construction, what were Mr. Little's duties and what did he actually do?

A. He had absolute control of all the construction.

262. Did that include street work, as well as work connected with the plant proper?

A. Through his lieutenants, you know, but he was in charge absolutely.

1133 263. To whom, if to anyone, during the progress of construction, did Mr. Little report both as to the progress of the work and disbursements?

A. I would have to look that up in the record; I think he reported to Mr. Walton.

264. State whether or not within your knowledge, while the work

was in progress, there were weekly or monthly detailed stat showing expenditures in the work of construction?

A. Not to my personal knowledge, but it was reported to n the records were very correctly kept.

265. You had no personal knowledge of that then?

Ans. No sir.

266. You did not see those statements yourself?

Ans. No sir. Well, I occasionally saw a statement with re to certain work like laying pipe, that is, what the estimate what it would cost after it was finished.

267. Do you know whether those statements were furnishd or monthly?

Ans. I could not say whether it was weekly or monthly.

268. How far did Mr. Little's authority extend in the ma expenditure?

A. There was no limit; we all had confidence in him and I not say there was any limit.

269. Do you know the manner in which the funds used i struction were handled?

A. Not absolutely, I have a general idea.

270. Do you know where the funds used for that purpose kept during the time?

Ans. Kept here.

271. In what bank?

Ans. They were paid through the Merchants national.

273. Were those funds kept on deposit at the Merchants na bank?

Ans. We kept an account there to meet our expendi

1134 274. State whether or not all of the expendit-res of struction were handled through the account kept a Merchants national bank?

Ans. That I could not answer; I don't know.

275. From what source did those funds come, if you know?

Objected to as incompetent and immaterial.

A. Borrowed money.

276. Who put those funds in the Merchants national bank?

Objected to as incompetent, immaterial, irrelevant, alr answered.

A. I presume the treasurer of the company.

277. Who was your treasurer at that time?

A. I think Mr. Walton.

278. Do you know where Mr. Walton got the funds?

Objected to same grounds as before.

A. I do not.

279. Had you any knowledge whatever during that period o person who was furnishing the money for the construction?

Objected to as incompetent and immaterial.

A. I knew it was borrowed money but didn't know where it came from.

280. What was the financial standing and ability of Mr. Walsh and all the other stock holders of the complainant company at the time of the construction of its plant in Peoria?

Objected to same grounds.

A. I don't know as I have a right to question the financial standing of different people in court; most of them were men of a good deal of means, some of them quite wealthy.

281. I have understood you to testify that your reason for interesting Mr. Walsh in the enterprise was because of his very large wealth—is my understanding correct?

Ans. Yes sir.

282. When was the first assessment made upon the capital
1135 stock of the complainant company?

Ans. I don't remember.

283. What was it?

Ans. A 20 per cent. assessment I think.

284. How many assessments up to the present time have been made upon the capital stock?

(Objected to as incompetent and immaterial.)

A. That is the only assessment that has been made.

285. State whether or not within your knowledge the various stock holders paid the assessment of 20 per cent. to which you have referred?

A. I think they all paid it, in fact I know they did.

286. Was that a regular call made by the board of directors?

A. That is my remembrance.

287. Who was the treasurer of your company at that time?

A. I think Mr. Walton.

288. Do you know what disposition was made of the funds obtained from that assessment?

Ans. No sir.

289. When with reference to the time you purchased the ground, upon which the manufacturing plant of complainant was constructed, was that assessment made?

A. It was made some time afterwards.

290. From whom was that purchase made?

A. From Clarke Bros. Distilling Co., or Clarke Bros., I don't know which, but it was one or the other of those firms.

291. And was that the place where you was in business for a number of years?

Ans. Yes sir.

292. What, if anything, during the period of construction, did you have to do with auditing the accounts of complainant company?

A. Nothing whatever.

293. Were they within your knowledge audited in Peoria?

A. I don't know.

294. Did you from month to month know what the disbursements were?

Ans. I didn't know but I could have found out; I think perhaps there were one or two months I asked the question.

1136 295. It was not brought to your knowledge officially?

A. No sir.

296. During the time your company were making preparations for furnishing gas to what extent, if at all, was the subject of rates under consideration by the board of directors?

Objected to as incompetent and immaterial.

A. I think it was talked over once whether it was at an informal meeting or formal meeting I don't remember.

297. Are you able to recall at this time anything definite with reference to when that discussion occurred?

Ans. No sir.

298. You don't remember whether it was when you were approaching the time when you would be ready to operate or not?

A. I could not give the date.

299. When you were preparing for incorporation and application for a license from the city, were you familiar with the gas situation in Peoria?

A. To a certain extent, as much as I could find out from a close corporation.

300. Did you know of any changes in prices during that time while you were getting ready to furnish gas or during your preliminary arrangements?

A. It seems to me there was a change during that time.

301. There was only one gas company in the field here at that time, was there not?

Ans. That was all.

302. Do you remember when, with reference to the time the ordinance was passed, that change in price was made?

A. I think it was made about the time we got our incorporation papers—shortly after. No, I guess I am mistaken: I think it was after we got our ordinance.

303. Do you remember whether that change was an advance or decrease in rates?

Ans. I think it was an advance.

1137 304. And was that the only change that was made during the early history of your company?

A. You are speaking of the rates of the old company, are you?

305. Yes sir.

A. They discovered then they had made an advance instead of a decrease and then made another change.

306. When were those changes with reference to the time you made your application for a license from the city?

A. I don't remember.

307. I will ask you if the old company had not made a very heavy reduction in rates shortly before your license from the city was granted?

Ans. I think I answered that; they tried to make a reduction and did not in their first effort and then they did make a reduction.

308. But they did make a reduction before your license was granted?

A. I will not say whether it was before or afterwards, it was somewhere along there.

309. I will ask you if it is not true you made use of that fact before the council in securing your ordinance by way of showing the council what threats of competition had already done and what actual competition would do in the future?

A. I don't remember the wording of that paper exactly.

310. Were you consulted in the matter of the preparation of the ordinance?

A. Yes, I think I was or talked it over, it amounted to the same thing.

311. Who was present at any time when the subject of what the ordinance should contain was under discussion?

A. I don't remember; Mr. Little was always present, I think, and Mr. Miller was with us a good many times.

312. Did you know substantially what the provisions of
1138 the ordinance would be prior to the time it was prepared?

A. I think it was talked over with me.

313. Did Mr. Walsh also know what kind of an ordinance would be presented to the council?

Objected to as incompetent and immaterial.

A. I don't know.

314. What conversation, if any, did you have with him upon that question?

A. I don't remember of any, I may have had some.

315. Do you know whether or not a copy of the ordinance was submitted to him before it was presented to the city council?

Objected to same grounds as before.

A. I don't remember.

316. To what extent did Mr. Little participate in the work of preparing the ordinance in question?

A. I don't know whether it was prepared by him or by our attorneys.

317. Don't you know as a matter of fact that he was largely consulted with reference to the subject?

A. Not positively but he ought to have been as manager.

318. Mr. Little was then a resident of Peoria, was he not?

A. I think so; he was here at least intending to come here and make it his home.

319. Did you know when the ordinance was to be presented to the council?

Ans. Yes sir.

320. Who presented it, if you know?

A. I did know at the time but don't remember now.

321. What, if anything, had you to do personally with securing the passage of the ordinance through the council?

A. One member of the council asked me if the ordinance was granted if we intended to build a works, or was to sell out; I told him we would build the works.

1139 322. Do you know who that was?

A. Yes sir, it was Mr. Thode on the board of trade; he came to me himself—I didn't go to him—and asked if the works were to be built.

323. Were you present at any meetings of the city council during the time the ordinance was pending?

A. No, except I was at the meeting at which the ordinance was passed.

324. How many of the stockholders were there on that occasion?

A. I don't remember; there were three or four directors or stockholders.

325. Did you know it was to be passed at that meeting?

A. I knew it was coming up.

326. When was that meeting held, with reference to a change in the council resulting from a recent election?

A. It was early in the evening of a regular meeting and election night; it was the day of election.

327. State whether or not you were advised at or about the time you made an application for a license from the city of Peoria that the old company declared if a new company installed a plant in Peoria the price of gas would be put to 50 cents per thousand cubic feet?

Ans. I don't remember.

328. Do you remember hearing any discussion of that question at all?

A. I don't remember whether I heard it at that time or later.

329. Do you know of any change in your plans consequent upon any such threat upon the part of the old company?

Ans. No sir.

330. State whether or not, either through you or Mr. Little during all the time you were preparing to furnish gas, Mr. Walsh and Mr. Walton were kept advised of the situation in Peoria so far as pertained to gas questions?

Objected to as incompetent and immaterial.

1140 The MASTER: I do not see the materiality of it but the witness may answer subject to the objection.

A. Not through me; I presume Mr. Walsh was but not to my personal knowledge.

331. When, with reference to the time your company was ready to furnish gas, did the subject of rates come up for consideration?

A. I don't think we had taken it up.

332. At what price did you begin to furnish gas as compared with the price then charged by the old company?

Objected to as incompetent, immaterial and irrelevant.

A. I think it was 40 cents with a discount of 10 cents if the bill were paid within 10 days of the first of the month.

333. Is it your recollection that was the price at which your rates started?

Ans. That is my recollection.

334. For how long a period of time did those rates continue?

A. I should say from 4 to 6 months.

335. Who fixed those rates?

Ans. Mr. Little.

336. Do you know whether or not anybody else participated in the fixing of them?

A. I do not. I don't know whether I was home at the time; if I was it may have been talked over with me, but I don't remember.

337. State whether or not any other changes in rates were made prior to about August 31, 1900?

Ans. I could not state.

338. Do you remember the lowest rate fixed at any time during the year 1900 by your company and also by the old company?

A. No sir, I could not answer.

339. State whether you remember a change in the rate made about August 1, 1900?

Ans. I don't think I was home at that time; that is the time of year I am usually away.

340. Have you anything from which you can determine upon examination as to whether or not you were in Peoria at that time?

A. I think perhaps I could tell by reference to books.

1141 341. State whether or not you knew there was to be a change in the rate at or about that time?

A. If I was away, I did not.

342. Have you at this time any recollection of having been consulted with reference to the fixing of those rates about that time?

Ans. No sir.

343. What if anything had the board of directors of your company to do with the determination of the rates to be charged at that time or previously?

A. I think it was left largely with Mr. Little. I don't think it was taken up before the directory.

344. Look at page 8 of defendant's answer in this case now shown you and state whether or not you saw published in the Peoria press notices, pertaining to gas rates of your company and of the old company, of which that purports to be a copy?

A. I don't remember of seeing it in the paper.

345. Have you any knowledge whatever as to the circumstances under which any such publication was made?

Ans. No sir.

346. Have you any knowledge whatever as to the circumstances under which those rates were fixed?

Ans. No sir.

347. When did you for the first time learn that the rates had been fixed, as stated, and what were the circumstances under which that information came to you?

Objected to as incompetent and immaterial.

A. I don't remember.

348. State whether or not any official report of that action was made to you after your return to Peoria, if you were absent at the time?

A. There was no official report made to me.

349. State whether or not there is any record of it in the minutes of the meeting held by your directory so far as your knowledge extends?

(Objected to as incompetent and immaterial.)

1142 A. None I know of personally.

350. State whether or not at meetings of your board the minutes of the previous meeting are read and presented to the members for action?

Ans. They are.

351. Have you at this time any knowledge whatever of the circumstances under which the rate, to which your attention has been directed, as shown by the answer, was fixed?

Objected to as immaterial, irrelevant and already answered.

A. I don't remember.

352. Do you remember whether or not the subject has ever been called to your attention by any of the people with whom you are associated in this company?

A. I remember the rate being talked over.

353. State whether or not you have had any conversation with Mr. Walsh with reference to the rate mentioned?

Objected to as incompetent and immaterial.

A. I may have talked it over with him some.

354. What knowledge, if any, have you regarding any arrangement between your company and the old company which constituted the basis for fixing the rates to which your attention has just been directed?

Objected to as incompetent, immaterial and irrelevant.

A. I have no personal knowledge.

355. State whether or not within your knowledge any arrange-

ment was made with the old company by which the rates were to be advanced in conformity with the notices which were published in the Peoria press, copies of which purport to be incorporated in defendant's answer?

(Objected to as incompetent and immaterial.)

A. Not to my personal knowledge.

356. What knowledge or information have you upon that subject and from what source did you obtain it?

Objected to as incompetent and immaterial and in view of the former answer of the witness it plainly calls for hearsay.

1143 A. I don't remember; I presume from Mr. Little: I was away at the time.

357. State whether or not an arrangement was made shortly before the publication of those notices between your company and the old company to the effect there should be an advance made at the same time and on the same basis?

Objected to as incompetent and immaterial.

A. Not to my personal knowledge.

358. What knowledge or information have you upon that question and from whom did you obtain such knowledge?

Objected to on same grounds and also as calling for hearsay.

A. I was away in July, August and part of September and I presume, if I heard anything about it, I received the news from Mr. Little on my return home.

359. Do you know as a matter of fact that such an arrangement was made between the two companies?

Objected to as incompetent, immaterial and already answered.

The Master: I think that question has been substantially answered, still he may answer it again subject to the objection.

A. I do not.

360. Do you know how it happened that the same notices for the same advance were published in the same papers, on the same dates, and to take effect at the same time?

Objected to as incompetent, immaterial and a mere statement and conclusion of counsel.

The Master: Let the witness answer if he knows about it.

A. No sir, I do not.

361. What, if any, changes have been made in the prices charged by your company for gas since about September 1, 1900?

Objected to so far as it relates to any time since the commencement of this suit.

A. I cannot answer the question.

1144 362. To what extent, if at all, have you been consulted regarding rates since the establishment of the one referred to that went into effect about September 1, 1900?

A. I am away a great deal of the time, over half the time, and when I accepted the presidency of the company I did it under protest, as I would not be here enough to give it proper attention, and finally in accepting the office I did so without salary with the understanding I was not to give it my personal attention, that is to the details. That is as nearly as I can answer the question.

363. Do you know of any member of the board, other than Mr. Little, who has participated to any extent in the fixing of rates?

A. No sir.

364. Do you know what the rates charged by your company, since it began to furnish gas, have been as compared with the rates charged by the old company during the same period?

Objected to as incompetent and immaterial.

A. I cannot answer the question without reference to the records.

365. At the time you began to furnish gas, what portion of the territory you were occupying was also occupied by the old company?

Objected to same grounds.

A. I think about the same territory.

366. What is the fact at the present time, and what has it been since the time when you began to supply gas?

Objected to as incompetent, immaterial, and calling for matters occurring since the commencement of this suit.

A. We do not occupy as much territory as the old company did, but really in the same territory so far as our mains extend.

367. During the time you have been president of the complainant company, what knowledge have you had of the volume of gas furnished from day to day?

Ans. I have not kept myself posted.

368. During that time have you had any knowledge of
1145 the entire output in the city of Peoria?

Ans. No sir.

369. State whether or not that subject has come before the board of directors from time to time in its meetings?

Objected to as incompetent and immaterial so far as it relates to matters occurring since the commencement of this suit.

A. I have no remembrance of it coming before the board of directors.

370. During the period covered by the operation of your company in supplying gas, what knowledge have you had of its receipts and disbursements?

(Objected to same grounds.)

A. I have had no knowledge.

371. What knowledge has your board of directors had so far as you know?

Ans. None that I know of.

372. Do you know whether or not the volume of the output of your company increased from month to month up to September 1, 1901?

Objected to as incompetent and immaterial.

A. No, I do not.

372. Do you know to what extent, if at all, the output of your company has increased since September 1, 1901?

Objected to same grounds.

A. No, I do not.

373. Do you know what proportion of the gas supply of Peoria and vicinity was being furnished by your company about September 1, 1901?

(Objected to as incompetent and immaterial.)

A. No sir.

374. Do you know what proportion of the supply has been furnished by your company since that time?

Objected to as incompetent and immaterial and calling for matters that have occurred since the commencement of the suit.

A. I do not.

375. Have you any knowledge whatever at the present time as to the daily output of your company at Peoria?

1146 Objected to same grounds as last stated and further in connection with that question, and in view of the objections made, complainant's counsel advises the witness that under the law he is not compelled to answer such questions unless he sees fit.

The MASTER: I do not think that is an exception you have a right to claim for this witness, Mr. Ritcher; he is not your witness.

Mr. RITCHER: We will go before the court on it if the witness does not desire to answer.

The MASTER: You can do that unquestionably but I don't think you have any right to advise the witness called on behalf of the other side that he need not answer a question; that is a privilege the witness may claim for himself but it is not a right counsel on the other side can claim for him. I will say, however, I do not see any possible materiality in the question but, if counsel for defendant desires it to be answered, the witness may answer subject to the objection made.

Mr. ABBOTT: If he chooses so to do.

The MASTER: No sir, I do not add that; it would not be proper for me to.

The WITNESS: Shall I answer the question?

Mr. Abbott: Answer it if you choose to.

The Master: No I will not permit you to advise a witness cal on the other side not to answer questions.

The Witness: I think a question of that kind is a compa secret.

The Master: Do you decline to answer on that ground?

The Witness: I decline to answer.

(Mr. Tichenor:)

376. Is there any o r reason why you decline to answer?

Ans. No.

377. Have you any knowledge as to what your daily o
1147 put was on the first of September, 1901?

A. I have not.

378. Do I understand your answer with reference to the quest as to the present daily output to be that you refuse to make a statement whatever on that subject, or as to your knowledge up that subject?

A. Well, I should consider it a question I should not answer ev if I knew it.

379. Do you know the facts?

Ans. I do not.

380. If you do not know the present daily output what w your reason for refusing to answer the question?

A. Simply for the reason I do not think it is a question an offic has a right to answer; it might lead up to another question.

381. Do you know whether the Peoria Gas Light & Coke Co. the present time is manufacturing any gas at all?

Objected to as incompetent, immaterial and irrelevant.

A. I don't know.

382. State if it is not a fact within your knowledge that at th present time the complainant company is furnishing all the gas tha is being consumed in Peoria and has been for several months la past?

Mr. Abbott: Complainant objects to the question as incompeten immaterial, irrelevant and calling for testimony on matters occu ring since the commencement of this suit, calling for evidence o matters which are not in issue here and cannot be properly made a issue and we advise the witness that he may answer the question o not, as he sees fit.

The Master: He may answer subject to the objection.

A. I don't know of my personal knowledge.

383. Do you know from anything that has been told yo
1148 that such is the fact?

Mr. Abbott: Complainant objects to the question on the sam grounds as before stated and also in view of the last answer o

the witness it calls for hearsay evidence and we give the same advice to the witness with reference to his answer.

The MASTER: He may answer subject to the objection.

A. I cannot answer it.

384. What do you mean by that answer?

A. I don't know except I have seen it in the Peoria papers.

385. How recently have you been to the plant of the old company?

A. I have not been in there for four or five years.

386. How recently have you been to the plant of your company?

A. I have been in the office but not to go through the works for four months.

387. How many station meters has your company in operation at the present time and how many has it had since it began its service?

Mr. ABBOTT: Complainant objects to the question as incompetent, immaterial, irrelevant, calling for evidence and occurrences since the beginning of this suit and not in issue here and we advise the witness that he may answer or—Interrupted.

The MASTER: No, I don't want you to do that.

Mr. RITCHER: We have a right to state anything we want in the records.

The MASTER: I don't want you to advise this witness that he need not answer, because I do not think it proper practice: I do not think counsel has any right to advise a witness, called on the opposite side that he need not answer a question. I know of no such rule of law.

Mr. ABBOTT: We are merely advising the witness that he can claim that privilege.

The MASTER: The witness has been advised before that he 1149 can claim that privilege if he sees fit.

A. I don't know.

388. Who, if anyone, since your company began furnishing gas and up to the present time, has audited the accounts?

Objected to as incompetent and immaterial.

A. No one to my knowledge.

389. If anything of that character had been done in Peoria would you from your official connection with the company know it?

A. Oh if I was taking an active part in the work, I should know it.

390. I mean as the facts exist?

Ans. Not necessarily so.

391. Within your knowledge, from the time your company first began work, in Peoria to the present time, have any accounts been audited in Peoria?

Objected to as immaterial and incompetent.

A. Not to my knowledge.

392. Where are all the office vouchers kept, if you know?
A. I only know from hearsay.

Mr. RITCHER: Counsel on the other side knows better than witness.

The MASTER: State if you know, Mr. Clarke.

A. In Chicago.

393. Where are the books of accounts kept, if you know?

A. At the Equitable Trust Co. in Chicago—well the daily boo of accounts are kept here.

394. The regular books of account of the company are kept whe

A. In Chicago.

395. Where is the company's financial account kept?

A. Their daily financial account is kept in Peoria; the gene financial account is kept in Chicago.

396. From what points are the company's bills paid at the pres time and what has been the fact since it first began in Peori

1150 A. The working accounts and expenditures here are pa by checks at present on the Commercial National Bank Peoria—no I think on the Merchants' national bank?

397. How long has that been the fact?

A. It may be the Merchants and it may be the Commercial, I a not positive.

398. How many different bank accounts does your company kee in Peoria?

Ans. I think there are two kept.

399. At what bank besides the Merchants?

A. The Commercial.

400. Is the account of the Commercial kept in the same name a the account at the Merchants?

Ans. I don't know.

401. Under how many different names is your company operatin in Peoria, if more than one?

Ans. I think only one.

402. Has it ever been operated under two names so far as you knowledge extends?

Ans. No sir.

403. State for how long a period of time your company has kep an account at the Commercial national bank?

A. I could not answer positively but I should say from four t six months.

404. Do you know the circumstances under which the account was divided?

(Objected to as incompetent and immaterial.)

The MASTER: I don't think it material but the witness may answer subject to the objection, if counsel desires to press it.

Mr. TICHENOR: I would like to have the question answered.

A. I don't know.

405. What had you to do with the opening of another account at the Commercial?

A. Nothing whatever; I think the question was asked if I had any objection to it.

406. How were you advised of the fact that another account had been opened there?

Ans. I think I was told.

1151 407. By some of your people?

Ans. Yes sir.

408. Who has authority to select the banks with which your company shall carry accounts in Peoria?

A. I think it rests in Mr. Little's judgment.

409. State whether or not your company carries large or small accounts in Peoria?

Objected to as incompetent and immaterial.

The MASTER: I don't think it material but he may answer it if you desire to press it.

Mr. TICHENOR: I would like to have it answered.

A. I don't know.

410. Have you ever had, or exercised, authority to sign checks on funds belonging to your company?

A. Yes, sir.

411. When and for what purpose?

Objected to as immaterial and irrelevant.

A. In the absence of Mr. Little, I have signed up checks for the pay roll two or three times and other checks that have been presented to me by the book-keeper.

412. On what bank or banks were those checks drawn?

A. Most of them were on the Merchants' bank, some of them might have been on the Commercial bank. I don't think I have signed a check for a year.

413. Do you know what determines the funds that shall be banked in the Merchants' bank and what shall be banked in the Commercial bank?

Ans. No, sir.

414. At the time your company was being organized, and during the pendency of the ordinance, before the council, what was the intention with respect to entering the Peoria territory for the purpose of competing with the old company for the patronage here?

Objected to as incompetent and immaterial.

1152 A. We were after business and expected to get it by giving better treatment and better gas and we were delivering our gas right into the houses of the people.

415. What was the intention of your company with respect to competing with the company already in the field?

Objected to same grounds.

A. That is a question that would arise as your business proceeded; you never can tell until you get started.

416. Was it your intention to compete with the old company for business in this territory?

(Objected to same grounds.)

A. It was.

417. What was the intention of your company, at the time already mentioned, with respect to the prices to be charged as compared with the prices then charged by the old company?

Objected to same grounds.

A. I don't remember of that question ever having come up.

418. Is it not true that at the time to which reference has been made substantially all of the citizens in the territory proposed to be occupied by your company were already being supplied by the old company?

Ans. Yes sir.

419. Look at Exhibit "19" now shown you and state whether or not it bears your signature?

Ans. Yes sir, that is my signature.

420. Who originated the idea of preparing a paper of that character for presentation to the city council?

Objected to as immaterial.

A. I don't remember.

421. In whose possession was it when you first saw it?

Objected to as immaterial.

A. I don't remember.

422. Do you know who presented it to you for your signature?

A. I don't remember; when I signed it; I did sign it, for my name is here in my writing, but I don't remember the time it
1153 was signed.

423. To the best of your recollection, had all the signatures in advance of yours been affixed at the time your signed it?

A. I have no remembrance of it at all.

424. State whether or not at the time you signed Exhibit "19" you believed the statement and representation which it contained were true?

Ans. Yes sir.

425. Did you at that time believe that if a license or a franchise were granted to your company by the city that the statements and representations embodied in that document would be carried out in good faith?

Ans. I felt so.

426. State whether or not at the time of signing it you knew that

the company would be able to carry out those representations in good faith and still get a good profit on the necessary investment?

Objected to as incompetent, immaterial, irrelevant and involving an assumption not in the statement itself.

A. I thought so.

427. For what purpose was that document prepared, signed and presented to the city council?

Objected to as incompetent and immaterial.

A. I think it was to show we meant what we said in it and its being signed personally made it stronger.

428. Was it or not for the purpose of assisting in procuring your franchise or license from the city of Peoria?

Objected to as incompetent and immaterial.

A. We thought it would help us, yes sir.

429. State whether or not at or about the time that paper was prepared and presented you had any conversation or discussion with any of your associates in this enterprise concerning it?

A. None that I remember of.

430. Do you remember whether or not that subject came
1153½ up for discussion subsequently?

A. Not in the directory; I talked it over with Mr. Little what we would do.

431. Did Mr. Little know that this paper had been prepared and presented to your knowledge?

Objected to as immaterial and incompetent.

A. I don't remember when I signed this paper, or whether Mr. Little knew anything about it or not of my personal knowledge.

432. State whether or not Mr. Little ever talked with you with reference to it?

Ans. I don't remember.

433. Was Mr. Little in Peoria at that time?

A. That I cannot answer.

434. To what extent, if at all, did Mr. Little participate in securing the passage of the ordinance to your company?

A. I don't know of any.

435. Was he also present on the occasion of its passage?

A. I think he was but I cannot answer positively.

436. What, if any, representations did Mr. Little ever make to you with respect to the prices at which gas could be sold in Peoria and yet make a reasonable profit on the investment.

Objected to as incompetent and immaterial.

The MASTER: I don't see the materiality of it but if you want the question answered it may be answered subject to the objection.

Mr. TICHENOR: I would like to have it answerd.

A. I don't remember to what extent we talked those matters over; we talked a good deal with reference to what delivering gas to the working people meant by delivering it into the houses; it meant a great deal to a laboring man if he has to pay for his service pipe from the street main into his house; we also talked over selling people fixtures at a very low price. In other words, we were to get the goods to our customers free of any cost to the burner. Mr.
1154 Little looked at things in a very liberal way.

437. Is it not true that during your preliminary arrangements with reference to getting into the Peoria territory, Mr. Little advised you as to the cost of gas to consumers in Peoria?

Objected to as incompetent and immaterial.

The MASTER: I do not see the materiality of it but the witness may answer subject to the objection.

A. I cannot answer the question.

438. Do you remember the fact that at one time the price of gas in Peoria charged by your company and by the old company was 30 cents per thousand feet?

Ans. Yes sir.

439. State if it is not true that during that time Mr. Little said to you that the profits of the old company at that price was a small one in as much as their cost of production was much greater than yours?

Objected to as incompetent and immaterial.

A. I have no remembrance of such a conversation.

440. Did you testify as to the time when the assessment of 20 per cent. on the stock was made?

A. I don't think I stated the exact time; I think I said 5 or 6 months after the papers were made out, but I think it was longer than that.

441. Will you ascertain that fact and report it to me later?

A. Yes sir.

Adjourned by agreement until Thursday, March 13, 1902, at 9:30 o'clock a. m.

1155 United States court room, Government building.

PEORIA, ILL., THURSDAY, *March* 13, 1902—9:30 a. m.

Present: Judge I. C. Pinkney special commissioner. Mr. E. C. Ritcher and Mr. W. T. Abbott appearing for complainant. Mr. Henry Mansfield and Mr. F. H. Tichenor appearing for defendants.

Cross examination of Mr. SUMNER R. CLARKE by Mr. Abbott:

1. In connection with the petition of the stock holders of complainant company to the city of Peoria, which was referred to in

your direct examination as "Exhibit 19," you stated that you believed the statements and representations contained in it to be true. I will ask you to state what facts or reasons induced such a belief?

A. There was a progressive man placed at the head of the new company who understood the improvements that could be made, and service pipes put in from the main to the houses free, which to a poor man means a great deal, it enables poor people to get their gas into the house without any expense.

2. What had been the practice of the old company, if you know, in that regard, that is, with reference to charging consumers for service pipe from the street mains into the premises?

Objected to as immaterial, irrelevant and not cross examination.

A. They had always charged them with what seemed to be rather an excessive price.

3. State what if you know was the intention and purpose of your company with reference to charging for such service pipe?

A. We were to make no charge.

4. What has been the practice of your company in that regard since its organization up to the time of the commencement of this suit?

Ans. I think there has been no charge.

1156 5. To what extent was your belief in the statements and representations contained in "Exhibit 19" affected by your knowledge of Mr. Little's business capacity and good business ability?

A. Good business ability and gentlemenly treatment of customers is always appreciated.

6. State whether from your knowledge of Mr. Little's ability and experience you had reason to believe, and did believe, that there would be a radical change in the treatment of customers and method of doing business in the office of the company then proposed to be formed as compared with those prevailing in the old company?

Objected to as incompetent, immaterial and calling for a conclusion.

A. I believe so and it has proved I was right.

7. As whose representative, or in what official capacity, did Mr. Little act after the organization of the company in the construction of the plant and in other duties that you have testified to Mr. Little performed?

A. Mr. Little acted as general manager for the company.

8. I asked you that question for the reason I thought you possibly apprehended the purport of a question asked you by counsel for defendant when you replied that he was Mr. Walsh's representative?

A. That was an error; I should have said he was recommended by Mr. Walsh as a practical gas man, but represented the company.

9. State whether there was necessity for a practical gas man in

view of the other businesses in which the stock holders, or those proposing to become stock holders were interested?

A. There was.

10. State whether so far as you know in negotiations had by you or your associates in the preliminary organization of the
1157 company there were at any time any representations made that the stock was all to be owned and held by Peoria people?

A. No sir, there was not.

11. Was the purpose of the large subscription of stock in your name for the reason that there was any desire to withhold Mr. Walsh's name from the subscription list, or was it solely the reasons as testified by you in your direct examination?

Objected to as immaterial and incompetent.

A. There was no desire to conceal his name; the reason for the stock being taken in my name was, as I have testified on direct examination.

12. Were you interested in the firm of Clarke Bros. at the time of the purchase of the real estate from them on which the company's manufacturing plant was located?

A. I said yesterday the land was either in the name of Clarke Bros. or Clarke Bros. & Co., I didn't know which, but I was interested in neither at the time and never had been.

And further the witness saith not.

JOHN THODE, called on behalf of defendant, being first duly sworn according to law, deposes and says:

Direct examination by Mr. TICHENOR:

1. State your name, occupation and place of residence.

A. John Thode; am in the grain business on the board of trade and reside at 601 Third avenue, Peoria, Ill.

2. How long have you been a resident of Peoria?

A. 27 years.

3. How long have you been a grain merchant on the board of trade?

Ans. All the time since I have been here.

4. State whether or not you were a member of the city
1158 council at the time of the passage of the ordinance granting a franchise or license to the complainant company in this case?

A. I was.

5. Do you remember the occasion of the passage of that ordinance?

Ans. I do.

6. Do you also remember of its pendency in the city council for some time prior to its passage?

Ans. Yes sir.

7. State whether or not you knew personally the gentlemen who were interested in that company during the time it was pending before the council?

Ans. Yes sir.

8. How long had you known them?

A. Ever since I had been in Peoria.

9. State whether or not you had done business with any of them?

Ans. I had.

10. What was their standing and reputation generally in Peoria, both financially and for integrity at that time?

A. Very good so far as I knew in both respects.

11. State to what extent you inquired regarding the purposes of the gentlemen in making an application for a license and from what source you made those inquiries?

Objected to as incompetent and immaterial.

A. I inquired from the members of the board of trade and they all recommended it, they thought it was a straight upright transaction and from the papers that were furnished me at the time, while I was alderman and previous to the time I voted, I believed it was a good thing for the citizens and the gas consumers.

12. Look at the paper now shown you marked "Exhibit 19" and state whether you recognize the names appearing thereon as those of gentlemen who you understood were interested in securing the passage of the ordinance and who were the interested parties in the new company?

Ans. I know them all.

1159 18. State whether or not those were the gentlemen whom you supposed were financially interested in the new company?

A. They were to the best of my judgment.

14. What if any representations were made to you by any of the interested parties with respect to any interests in the company outside of Peoria. In other words, was it to be a Peoria enterprise, or was it to be made up partly of Peoria men and partly of outsiders?

(Objected to as incompetent and immaterial.)

A. I was told by these gentlemen, a number of them on this petition, that it was a purely Peoria enterprise, Peoria capital.

15. What if any influence did that fact have upon you in the course that you pursued with reference to supporting the ordinance in question?

(Objected to same grounds.)

A. In my judgment I thought it was my duty to support the ordinance because I thought it was for the benefit of the people of Peoria.

16. Who were the gentlemen, whose names you see upon Exhibit "19" that conversed with you beforehand with reference to what it was proposed to do?

A. Ex-Mayor Philo B. Miles; Mr. Ben Warren, Jr., and Mr. Sumner R. Clarke.

17. How long had you know- those gentlemen?

A. Ever since I became a member of the board of trade in 1878.

18. What statements or representations did they make to you with reference to the genuineness of the undertaking and of the benefits or advantages to accrue to the citizens by the organization and operation of a competing gas company in Peoria?

Objected to as incompetent and immaterial.

A. Ex-Mayor Philo B. Miles told me on the board of trade that he believed it was a straight undertaking, that the people of Peoria would be benefited by it, that it would give a great deal of
1160 employment to idel labor in this city and that he believed all the aldermen ought to vote for it.

19. What, if any, statement did he make to you with respect to the prices which the new company, if given a license, would make to gas consumers in Peoria?

A. I do not believe that he made any.

20. Did you converse with him on more than one occasion?

A. Only one occasion.

21. How frequently during those days did you come in contact with Mr. Miles?

A. Nearly every day; we were both members of the board of trade transacting business there.

22. What conversation, if any, did you have with Ben Warren, Jr., upon the same subject?

A. Ben Warren, Jr., told me that I could not afford to vote against that ordinance; that it was Peoria enterprise; that it was Peoria capital and he told me that the rate per thousand would never exceed 75.

23. State whether or not you in good faith believed the representations and statements which those two gentlemen made to you with reference to that subject?

Ans. I did sir.

24. State whether or not those statements had any influence with you as to the course you should take upon the supposed ordinance.

Objected to as incompetent and immaterial.

A. They has sir.

25. What if any conversation did you have with Sumner R. Clarke pertaining to the same question?

A. I had only one conversation with Sumner R. Clarke on the board of trade; he told me one day that the gentlemen interested in this enterprise were to put in an up-to-date plant, that the people would be benefited by it and that he never understood any-
1161 thing in the way of an enterprise but what it would be carried out in good faith.

26. Do you remember whether those conversations you had were before or after the petition Exhibit "19" was filed?

A. They were after the petition was filed.

27. Then all of those conversations were had with them while the ordinance was pending before the council?

Ans. Yes sir;

28. State whether or not you believed the representations made to you by Mr. Clarke on the occasion to which you have referred?

A. I believed just what he told me.

29. Did his statements have weight or influence with you in determining the course you should take with reference to that ordinance?

(Objected to as incompetent and immaterial.)

A. They did.

30. State whether or not during the pendency of the ordinance there were any conversations between yourself and other members of the council with respect to that subject?

(Objected to same grounds.)

A. In regard to that there was a good deal of talk among the members before council meetings and they were all favorable, so far as I can remember, for the ordinance.

31. Did they express themselves as to why they were in favor of its passage?

(Objected to same grounds.)

A. They did in a general way; the general purport of it was that we were to get competition, that we were to get a lower rate for the consumers of gas.

32. State whether or not you understood at that time, that this application for a license was made for the purpose of giving this company an opportunity to enter the Peoria field for competitive purpose in the gas business?

(Objected to same grounds.)

A. Yes sir, that is my understanding.

33. State whether or not that feature of the case was dis-
1162 cussed or talked about among the members of the council at that time.

Objected to same grounds.

A. It was.

34. What was their understanding so far as disclosed by those conversations with respect to that subject?

Objected to same grounds; also calling for a conclusion and hearsay.

A. It was generally understood that it would be for the benefit of

the citizens and that there would be no sell out, no combination, that it would be two separate companies.

35. State whether or not those facts had weight with you in determining the course you should take with reference to that ordinance?

(Objected to as incompetent and immaterial.)

A. They did.

36. You are familiar, are you, and were at the time the ordinance was pending, with the matters contained in "Exhibit 19"?

A. Yes sir.

37. State whether or not you believed at the time the ordinance was pending, and at the time you voted for it, that the statement and representations made in Exhibit "19" were true?

A. I did believe it thoroughly.

38. State whether or not at those times you also believed in good faith that if the new company were granted a franchise or license, as it was then asking, that all those statements and representations would be carried out with the city and citizens of Peoria in good faith?

Ans. I did believe it thoroughly.

39. State whether or not those facts influenced you in arriving at your conclusion to vote for the ordinance in question?

Objected to as incompetent, immaterial, calling for a conclusion and already asked several times.

A. It did have an influence with me, yes sir.

1163 40. You voted in favor of the ordinance when it was put upon its passage, did you?

Ans. Yes sir.

41. State whether or not during the pendency of the ordinance, and up to the time of its passage, anything came to your knowledge, either through members of the council or through the gentlemen purporting to be interested in the proposed ordinance, tending to show, or raise suspicions as to the entire good faith of the whole proceedings?

Objected to as incompetent, immaterial, calling for a conclusion.

A. None whatever.

42. State whether or not the conversations which you had with the gentlemen you have named on the board of trade, your discussion with the members of the council and the matters contained in "Exhibit 19," were the basis for the foundation of your judgment and your action with reference to the ordinance in question?

Objected to as incompetent, immaterial and already answered several times.

A. They were.

43. Outside of the conversation you had with Mr. Warren, with

reference to prices to be charged by the new company, did you have any talk with any of the people interested in the proposed new organization upon that question?

Ans. No sir.

Cross-interrogatories by Mr. ABBOTT:

1. You met Mr. Miles frequently on the board of trade and Mr. Warren also when this matter of the new gas company was under discussion?

Ans. Yes sir.

2. And occasionally you met Mr. Clarke?

A. Only once or twice that I remember of; he did not come on change often.

1164 3. Is it not a fact that about the time of the organization of this company, and prior to the passage of the ordinance, there was considerable talk among the board of trade men generally with reference to the new company?

Ans. Yes sir.

4. Was not it apparent to you that there was a considerable demand among board of trade men and other business men generally for the organization of such a gas company?

Ans. Yes sir.

5. Who of the persons, whose names appear in "Exhibit 19," told you at any time that the company was to be wholly a Peoria enterprise?

A. I think the three gentlemen I have named.

6. That was all the representation made to you in that regard?

A. I think that was all.

7. All those names that appear there as interested parties are Peoria people, are they not?

Ans. Yes sir, I know them all.

8. At the time the ordinance was pending, you understood that all of those people were interested to some extent in the complainant company, did you?

Ans. Yes sir.

9. So far as you know did not that interest on their part continue up to the time of the commencement of this suit in September, 1900?

Ans. I could not say as to that.

10. So far as you know, it did?

A. Yes, so far as I know, but I would not be positive.

11. Do you remember about when this conversation with Mr. Miles was had on the board of trade?

A. I could not swear to the exact date but I think it was something like two or three weeks before the passage of the ordinance; at that time we had only two meetings of the council a month.

12. Were the conversations with the other two gentlemen about the same time?

A. About the same time, within a week or so.

1165 13. Then the conversations, to which you have referred, with all three of these gentlemen, took place from two to three weeks prior to the passage of the ordinance?

Ans. Yes sir.

14. You also state that ex-Mayor Miles assured you it was a genuine proposition and would give employment to idle men and in that way would be a benefit to the city?

Ans. Yes sir.

15. Did it not, as a matter of fact, give employment to a good many men after the passage of the ordinance?

Ans. I believe it did.

16. And to that extent was a benefit, was it not, as was represented?

Ans. Yes sir.

17. Did you ever have more than one talk with Mr. Warren?

A. Only one that I remember.

18. And that was the one you have stated was two or three weeks prior to the passage of the ordinance?

Ans. Yes sir.

19. The company at that time had not a erected a plant had it?

A. No sir.

20. And was not engaged in the manufacture or distribution of gas?

Ans. No sir.

21. The substance of your conversation with Mr. Clarke, as I understand it, related to the genuineness of the enterprise?

A. Yes sir.

22. And Mr. Clarke assured you that a works would be erected?

A. Yes sir.

23. When did you first learn that there was any outside capital interested in the complainant company?

A. I never knew anything about it.

24. So far as you know, it is a Peoria enterprise today, is it not?

A. I don't know anything about it; it is a matter I have no business in.

1166 25. When the matter was under discussion generally among the board of trade men and other business men, was it a subject of conversation at those times with regard to the old company, that its patrons were treated unfairly or discourteously, or were charged for service pipes and charged excessive prices for them?

A. I don't remember that part.

26. The talk then, as you remember it, was in the line of a general demand for such a new company as was proposed to be formed?

A. Yes sir.

Re-direct interrogatories by Mr. TICHENOR:

1. State whether or not the gentlemen expressing themselves on 'change to the effect that there ought to be a competing company

gave any reasons to you why the matter ought to be aided and why you ought to support it?

Objected to as incompetent, immaterial and not proper re-direct.

The MASTER: I don't think it competent unless confined to the gentlemen who were then interested in the company; I don't think it makes any difference what outsiders might say ob the subject, but I cannot exclude the testimony and if an answer to the question is insisted upon the witness may answer subject to the objection.

Mr. TICHENOR: I would like to have the witness answer it.

A. The gentlemen stated that we ought to have two companies, that the charges of the old company were too high and that they believed the new company ought to be encouraged by every alderman in the city council.

And further the witness saith not.

1167 W. H. CARROLL, called on behalf of defendants, being first duly sworn according to law, desposes and says:

Direct interrogatories by Mr. MANSFIELD:

1. State your name and residence.

A. W. H. Carroll; No. 115 Saratoga street, Peoria, Ill.

2. How long have you lived in Peoria?

A. A little over 34 years.

3. What business are you engaged in?

Ans. Shoe business.

4. Were you a member of the city council of the city of Peoria during March and April, 1899?

Ans. Yes sir.

5. Do you remember of the pendency before the council at that time of an ordinance granting to the Peoples Gas & Electric Company the right to use the streets of the city of Peoria?

A. Yes sir.

6. Look at "Exhibit 19" now shown you and state whether or not you knew, at the time of the pendency of this ordinance before the council, the gentlemen whose names appear there?

A. Yes sir, I know some of them.

7. Were you acquainted with the financial reputation of those gentlemen in the city of Peoria?

Ans. Only by reputation.

8. Who among that list of names did you know?

A. I was personally acquainted with Sumner R. Clarke, Ben Warren, Jr., C. C. Clarke, Robert D. Clarke and Theodore J. Miller.

9. Did you know the financial reputation of Henry Sandmeyer, Sr.?

Ans. Only by reputation.

10. What was the reputation of those gentlemen as to being men of great or small wealth?

A. They were supposed to represent great wealth.

11. What was their reputation for business integrity in t of Peoria at the time this ordinance was pending?

A. Very good.

1168 12. Did you at the time of the pendency of this ord before the council have any conversation with any o gentlemen relative to the passage of that ordinance?

A. With two of them, Robert D. Clarke and Theodore J. that is all I remember of.

13. What, if anything, did Robert D. Clarke state to yo reason why you should vote as you did upon the considera that ordinance?

(Objected to as incompetent and immaterial.)

A. Mr. Clarke claimed at the time that if the ordinan passed the company would invest from $500,000 to pr $1,000,000 in the city and during the hard times we were at that time would give a great amount of employment, esp to the people in my part of the city who were seeking empl at that time; he also said it would be a Peoria enterprise, senting Peoria capital and would certainly give the people of the advantage of their personal acquaintance.

14. Was anything said in the course of that conversation r to the new company entering into the field as a competitor Peoria Gas Light & Coke Co.?

A. I don't remember of that with Mr. Clarke.

15. Was anything said in that conversation with reference rates that would be charged by the new company as compa the rates that were charged at that time by the old company

Objected to as incompetent and immaterial.

A. Nothing further than he said competition would gi people the benefit.

16. State whether or not the gentlemen, whose names upon Exhibit "19," were all residents of Peoria at the tim ordinance was pending before the council?

A. I could not say as to whether they all were or not; s them, I can say, were residents. The Clarkes were res

1169 also Ben Warren, Theodore Miller, Philo B. Miles and Luthy. The others I know of but could not say as t residence.

17. How long had you known the individuals you have t you did know whose names appear upon that list?

A. I presume I have known Sumner R. Clarke 25 years known Mr. Warren personally probably 5 years and by repu about 10 years; have known Henry Sandmeyer, Sr. by repu probably 15 years. Knew C. C. Clarke in his lifetime abo years. Have known Philo B. Miles about 10 years.

18. Did you know George Littlewood?

A. Only by reputation.
19. How long have you known him by reputation?
A. Probably 10 years.
20. How long have you known Ferd Luthy?
A. By reputation about 10 years.
21. How long have you known Theodore J. Miller?
A. By reputation about 20 years, have been personally acquainted with him about 10 years.
22. Did you have any conversation with Mr. Miller relative to the passage of this ordinance?
Ans. Yes sir.
23. What, if anything, did Mr. Miller represent as a reason why you should vote as you did upon the passage of this ordinance?

Objected to as incompetent and immaterial.

A. Mr. Miller claimed the old company had a perpetual right in the city and the city had no control over it as it existed at that time and the only relief the people could get from the old company would be through competition, stating that competition would regulate prices and give the people better service, would take the independence away from the old company and divide the business which would create a better feeling among the people; he
1170 also said it being Peoria capital, Peoria labor would receive the benefit of the capital.
24. What, if anything, did Mr. Miller say to you during the pendency of this ordinance as to what competition had done or would do on account of the passage or the building and operating of a competing plant by this company?

Objected to as incompetent and immaterial.

A. He claimed competition was the life of trade and a new company would make the old company sell gas for what it could be sold for.
25. Were there any representations made by either of the gentlemen with whom you had these conversations with reference to who was going to represent the capital that was to be invested in this new company?

(Objected to as incompetent and immaterial.)

A. The citizens of Peoria.
26. Who made that statement to you?
A. I believe both Mr. Clarke and Mr. Miller.
27. What effect if any had the representations made by Mr. Clarke and Mr. Miller in your arriving at the judgment you did in regard to the passage of that ordinance?

Objected to as incompetent and immaterial.

A. It had considerable effect; I certainly always favor home capital.

28. Did you believe at the time those representations were made to you by Mr. Clarke and Mr. Miller that they were made in good faith and would be carried into execution by the new company?

A. Yes sir, I did.

29. What effect, if any, did the financial standing and business integrity of the gentlemen who were stockholders of that company have upon you in influencing you in the course you took with reference to the passage of this ordinance?

1171 Objected to as incompetent and immaterial.

A. Why, I never questioned their financial standing which certainly had influence enough on me to lead me to believe they would do just as they said.

30. Look at "Exhibit 19" now shown you and state whether or not during the time this ordinance was pending before the council "Exhibit 19" was presented to the members of the city council for their consideration?

(Objected to same grounds.)

A. To the best of my recollection the ordinance was passed the day of the filing of this petition.

31. Did you see that petition previous to casting your vote upon the passage of this ordinance?

Objected to as immaterial.

A. I don't remember of seeing it before the day of the passage of the ordinance.

32. State whether or not you belived at the time the representations contained in Exhibit 19 were made to the city council that they were true?

(Objected to as incompetent and immaterial.)

A. To the best of my knowledge, I did.

33. Did you believe that the people, whose names are signed to that petition, were capable of carrying out the representations therein contained?

Ans. I did.

34. State what, if any, effect those representations contained in "Exhibit 19" had upon your action in regard to the passage of this ordinance?

(Objected to same grounds.)

A. I certainly believed what the petition contained were facts and would be carried out to the letter.

35. Was there any discussion among the aldermen relative to the passage of this ordinance during the time of its pendency before the city council?

Objected to as incompetent and immaterial.

1172 A. Yes sir, there was considerable discussion.

(The MASTER:)

36. Did you hear it and take part in it?
A. Yes sir, I was present on several occasions.

(Mr. MANSFIELD:)

37. What, if you remember, was the general character of the discussions had at that time between the aldermen of the city council?

(Objected to same grounds.)

A. It was the opinion of a great majority of the aldermen that the ordinance should be passed by all means and as soon as possible so work could be commenced and completed as far as possible during that season.

38. Was anything said in those discussions between the aldermen relative to the prices of gas charged by the old company and the effect the passage of this ordinance would have upon those prices?

(Objected to as incompetent and immaterial.)

The MASTER: Of course, it is not competent now but it may become competent; the witness may answer subject to the objection.

A. The opinions of some of the alderman were that there should be a stipulated price placed in the ordinance but the opinion of the majority was that the ordinance should be left open for competition to regulate the price.

39. What reason did they give, if you know, why no maximum price should be provided for in the ordinance?

A. I don't remember of the alderman giving any specific reasons.

40. What reasons were given by various aldermen as to why this ordinance should be passed?

Objected to as incompetent, immaterial and already answered.

A. To create competition, have a competitive company and give the people better service.

41. Was anything said in those discussions as to what effect a competing company would have upon the price of gas in the city of Peoria?

(Objected to same grounds.)

1173 A. The opinion was unanimous we would get cheaper gas

Cross interrogatories by Mr. ABBOTT:

1. You have referred several times on direct examination to conversations with Mr. Clarke, I presume you refer each time to Robert D. Clarke?

Ans. Yes sir.

2. You never had any talk with Sumner R. Clarke about it?

A. Not that I know of.

3. Do you remember where your conversation with Robert Clarke took place?

A. I could not say the exact location; it may have been in the council chamber and it may have been elsewhere.

4. When did it take place?

A. It was during the pendency of the ordinance, probably two or three weeks before its passage—maybe a week.

5. Your best recollection is it took place in the council chamber or in the city hall?

A. I should say close to the city hall, somewhere around there.

6. Mr. Clarke spoke to you at that time of the fact that the company proposed to make a large investment and give employment to the then idle labor in Peoria, did he?

Ans. Yes sir.

7. What was your occupation at that time and for some time previous?

A. At that time I was in the saloon business; prior to that time I had been in the boiler business.

8. You are then to some extent familiar with the cost of iron structures generally, such as gas pipes and the iron work that goes into a manufacturing plant?

A. I have a general idea of them.

9. Did you observe from time to time after the ordinance was passed the work as it progressed either at the manufacturing plant or as pipes were being laid in the streets?

1174 Objected to as immaterial and not cross examination.

The MASTER: I don't think it proper cross examination.

Mr. ABBOTT: I propose to show that the representation made as to the investment of large capital was true and simply asked this preliminary question to show that the witness had reasonable knowledge of those things. It ought to be competent for us to show that representation was well grounded.

The MASTER: If it is asked with that ultimate object in view, it is competent and the witness may answer subject to the objection.

A. Yes sir.

10. Is it not a fact from your observation and from your knowledge that a large investment was put into that manufacturing plant and distributing system?

(Objected to same grounds.)

A. Yes sir.

11. And is it not a fact that employment was given to quite a large number of laborers for a considerable time during the progress of the work?

(Objected — same grounds.)

A. Yes sir.

12. So those representations were carried out and your belief in them well founded as subsequent events proved?

A. So far as the expenditures were concerned, yes sir.

13. Do you remember where you had your conversations with Mr. Miller?

Ans. Mostly at the city hall.

14. And they covered about what time with reference to the passage of the ordinance?

A. Probably 60 days prior to the passage of the ordinance.

15. Do you remember the last talk you had with him before the passage of the ordinance and when it was?

A. I think it was after supper on the day the ordinance was passed but am not positive.

16. Do you remember what was said in that particular conversation as distinct from the others?

1175 A. Not exactly; I think he asked me if I favored the passage of the ordinance that night at the meeting.

17. Then it was in some of the previous conversations you had with him that the talk was had with reference to competition, etc.?

Ans. Yes sir.

18. As I understand your testimony, it is that the statements of Mr. Miller at that time were that having a new company here would give the people the benefits of competition, or words to that effect?

Ans. Yes sir.

19. You testified with reference to the general discussion among the aldermen prior to the passage of the ordinance and the benefits that would accrue to the people from it and you referred to the improved service. Did you mean by that that the talk was there would be improved service in the way of treatment of customers handling of complaints, etc., as compared with the practice of the old company?

Objected to as not cross-examination and incompetent.

A. Yes sir.

20. Was there not considerable talk among the aldermen as to the character of the service then being rendered by the old company?

(Objected to same grounds.)

A. Yes sir.

21. And it was the opinion of the aldermen that the granting of an ordinance to a new company would result in giving the people better service in those respects?

Ans. Yes sir.

22. Do you know of your own knowledge what the practice of the old company was as to charging consumers for the service pipe from the street main into the premises of the consumer?

Objected to as immaterial and not cross-examination.

A. Not of my own knowledge, I don't know anything about it.

23. Was that matter under discussion at the same time as the other matters?

Ans. Yes sir.

1176 24. Did you in the course of that discussion learn what that practice was?

A. Not as to what the expense would be but it was conceded the old company always charged for the service pipe.

25. Do you know what the proposal of the new company was at that time and what its practice was up to the time of the commencement of this suit with regard to charging customers for such service pipe?

Objected to as immaterial, incompetent and not cross examination.

A. As I understood it the services were to be put in free.

26. Was not that one of the benefits it was claimed would accrue to the consumers of gas by the granting of this ordinance?

A. It was a benefit to be received from the passage of the ordinance, yes sir.

27. You understood that the persons whose names are signed to Exhibit "19" were interested in the new company at that time, did you?

Ans. Yes sir.

28. So far as you know, has that interest continued up to the month of September 1900, at the time this suit was commenced?

A. So far as I know, yes sir.

29. When did you first learn that there was any outside capital invested or involved in this enterprise in any way whatever?

A. I don't know anything about it.

Re-direct interrogatories by Mr. TICHENOR:

1. Do you at the present time know the holdings of stock in the complainant company of the people whose names are appended to "Exhibit 19"?

Ans. No sir.

2. So far as you know, have any of them any interest in it whatever?

Ans. I don't know whether they have or not.

(Mr. ABBOTT:)

3. Di- you know at the time what their respective holdings
1177 were?

Ans. Not the amounts.

(Mr. TICHENOR:)

4. But you did know they were the people interested?

A. They were the people represented to be interested, yes, sir.

And further the witness saith not.

STEPHEN WOLSCHLAG, called on behalf of defendant, being first duly sworn according to law, testifies as follows:

Direct interrogatories by Mr. TICHENOR:

1. State your name, occupation and residence?

A. Stephen Wolschlag; coal business; 517 Hecox St., Peoria, Ill.

2. How long have you been a resident of Peoria?

A. I have lived around Peoria and in the city all my life—44 years.

3. How long have you been engaged in the coal business?

A. About 22 years.

4. All the time in Peoria?

Ans. Yes sir.

5. Is your business a wholesale or retail business?

A. Wholesale at present; I have been in the retail and wholesale both, but was only in the retail business about one year.

6. Are you also a mine operator?

Ans. Yes sir.

7. And have been for many years?

Ans. Yes sir.

8. Are your mines situated in the vicinity of Peoria?

A. Yes in Peoria county.

9. State whether or not you were a member of the city council at the time of the passage of the ordinance granting to complainant company a license or franchise to use the streets and alleys of the city for the purpose of constructing a gas system?

A. I was.

10. Do you remember the fact of the presentation and the 1178 passage of the ordinance in question?

A. I remember the fact that it was passed, certainly.

11. Do you remember in a general way about how long the ordinance was pending?

Ans. I don't remember that.

12. Were you in the city of Peoria during all the time it was pending?

Ans. Yes sir.

13. Did you attend all the meetings of the city council during that period?

Ans. I did.

15. State whether or not you were a member of any committee having in charge the consideration of that ordinance?

A. I was chairman of the street and alley committee to which the ordinance was referred.

16. How many meetings did you- committee have for the purpose of considering the ordinance before your final report upon it?

A. I think only two.

17. Do you remember when those meetings were held with reference to the time the ordinance was put upon its passage?

A. I could not give the dates but they were generally held the night before each council meeting or sometimes in the afternoon. The rule was this way, any time we would call a meeting, say a member could attend tomorrow afternoon but did not want to attend tomorrow night, we would agree to meet whenever the committee desired, but it was always within a day of the meeting of the council.

18. Were those two meetings you speak of one or more weeks apart?

Ans. They were probably two weeks apart; at that time sometimes the council meetings were three weeks apart instead of two the council met twice a month and I don't remember whether it was just two weeks apart or three weeks.

19. Were you present at the time the ordinance was referred to your committee?

Ans. Yes sir.

20. What if any investigation or inquiry did you make
1179 with reference to the subject proposed by the ordinance prior to the holding of your first committee meeting?

A. Not any excepting in the way of meeting people on the street—business men that I would come in contact with would ask what we were going to do with that petition.

21. I don't care to ask what those expressions of opinion were. At the time of the presentation of the ordinance did you know the gentlemen who purported to be interested in it?

A. Yes sir I had heard of them all and knew some personally.

22. How long in a general way had you known some of the gentlemen who were interested in that enterprise?

A. I have personally known Sumner R. Clarke for 15 years; have personally known Theodore J. Miller about 14 or 15 years; have known Philo B. Miles 10 or 12 years; I know Henry Sandmeyer; I didn't know Mr. Littlewood personally but knew of him; I also knew Charles C. Clarke, Robert D. Clarke and Chauncey Clarke.

23. Did you know Mr. Luthy?

Ans. I knew of him.

24. What was the standing of those gentlemen in Peoria at that time both with reference to financial responsibility and business integrity?

Ans. Good.

25. State whether or not prior to the first meeting of your committee you had any interviews with any of the gentlemen interested in the new organization with respect to the ordinance?

A. Not any excepting with Mr. Miller; Mr. Miller wanted to know when we were going to get ready to report on it, that was all.

26. Who were your associates on that committee?

A. Messrs. Gorman and Dechman.

27. Who, if anyone, was present at your first meeting outside of the members of the committee?

A. Sumner R. Clarke and Theodore J. Miller.

28. Do you know under what circumstances they came to
1180 be present at that time?

A. Well, they wanted to know when we would have a meeting and one day I met Mr. Miller on the street and told him we were going to have a meeting at such a time at two o'clock; he said he would like to come before the committee and I told him we would like to have him, so when we had the meeting they were there.

29. To what extent did those gentlemen, or either of them, participate in the proceedings before your committee at that time?

A. There were different questions asked pro and con, of course; Mr. Miller was the spokesman and Mr. Clarke sanctioned what Mr. Miller said—said it would be carried out.

30. What if any statements or representations did Mr. Miller then make to your committee with respect to the proposed enterprise?

Objected to as incompetent and immaterial.

A. Mr. Miller simply gave an outline of what the old gas company had been doing, overcharging people and one thing and another, and we asked him what they proposed to do, and he said they would certainly cheapen gas for the city and citizens of Peoria, that competition itself would bring that if nothing else would, and the chances might be that the price of gas might be cut in two.

31. Did you know at that time what prices were being charged by the old company?

A. I did not only from hearsay, I never used any gas myself.

32. What if anything did Mr. Miller then state with reference to the intention of his company to become a competitor in the Peoria field in the furnishing of gas?

Objected to as incompetent and immaterial.

A. They simply said if they got this franchise they would build a plant of their own, lay their mains where they could get the frontage and do it at once as fast as material could be got.

1181 33. Did he or did he not also state to you they proposed to compete with the old company in supplying gas to Peoria and its citizens?

(Objected to same grounds.)

A. Yes sir that was one of the questions which came up in the committee, whether they would build a plant or not if we granted them a franchise and he said they certainly would build a plant and enter into competition for the business.

34. What if any representations were then made with respect to entering into a combination with the old company or selling out or buying out?

(Objected to same grounds.)

A. Well that was talked of, but I could not remember the words

spoken; there was a good deal of that pro and con in the committee, about the old company buying them out and they gave us assurances that they would not sell out to them but the words and language used I could not remember.

35. What part, if any, did Mr. Clarke take in the conversation?

A. Not any so far as he personally was concerned except when a question was asked Mr. Miller Mr. Clarke would sanction what Mr. Miller said was so.

Complainant objects to the foregoing answer as stating merely the conclusion of the witness and moves the court to exclude it.

36. State whether or not during any of that time Mr. Clarke antagonized anything Mr. Miller said with reference to the intentions of the company?

Objected to as incompetent and immaterial.

A. No sir.

37. Did all the members of your committee, to a greater or less extent, participate in the conversation and proceedings?

A. I think Mr. Gorman was absent at one of the meetings. Mr. Gorman generally attended the committee meetings when we
1182 had any but he did not seem to be very favorable towards a new gas company I didn't think, although I never asked him.

38. Did you know at that time what Mr. Gorman's business was?

A. Not any more than I knew he worked for the Peoria Gas Light & Coke Co. and had for a number of years.

39. At that time how long had you been a member of the city council?

Ans. I was going on my second year.

40. Did you know how long Mr. Gorman had been a member?

A. Mr. Gorman had served two terms in the council before I went in, I think.

41. Who, of the gentlemen interested in the new company, were present at the time of your second meeting, if anyone?

A. Nobody was before the meetings, at either of them, except Mr. Miller and Mr. Clarke.

42. Were they also present at the second meeting?

A. Yes sir.

43. What transpired on that occasion with reference to this particular subject?

Ans. About the same as the first talk pro and con about what they would do.

44. State whether or not you believed the representations and statements made by those gentlemen to your committee on those two occasions to be true and that if the ordinance or franchise were granted to their company those representations would be carried out in good faith?

Ans. I had every reason to believe so.

45. State whether or not the statements and representations made

to your committee by those two gentlemen constituted the foundation of the report which your committee made to the city council upon that question?

(Objected to as incompetent and immaterial.)

A. Yes sir.

46. You did make a report to the city council from your committee?

Ans. Yes sir.

1183 47. What representations or statements if any were made to your committee other than those to which you have referred which influenced your judgment in making up, or in assisting in making up, the report of your committee to the city council upon that ordinance?

(Objected to as incompetent and immaterial.)

The MASTER: I don't think it competent unless it is confined to the gentlemen who were interested in the company.

Mr. TICHENOR: I mean the people who were interested in the company.

The MASTER: The witness may answer.

A. I don't think there was a man that ever mentioned anything to me about it except those two gentlemen who were interested in the company.

48. What if any representations did they make to you with respect to the source from which the capital for the enterprise was to come?

Objected to as incompetent, immaterial and irrelevant.

A. Well, they made several statements as to that, but I don't remember now what they were, and I don't think I could repeat them as they were said anyway; it is too long ago for me to remember those statements.

49. What was your understanding, from your conversation with them, with reference to the proposed enterprise being purely a Peoria matter?

Objected to as incompetent, immaterial, already answered.

A. Well they simply showed us the people that were going into the business and claimed they could make gas a great deal cheaper than what the people were paying for it and that they expected to build the plant; further than that they never told us there was no outside capital going into it or anything of that kind that I recollect of.

1184 50. State whether or not the names of the people who were to be interested, as they explained to you, were the same as those appearing on Exhibit "19"?

A. They were about the same and as many more as wanted to go into it of Peoria people; they told us that.

51. State whether or not Exhibit "19" was before the members of the council prior to the passage of the ordinance in question?
A. Yes sir.
52. Are you able to state from recollection about how long before the ordinance passed you first saw that exhibit, if you saw it at all?
A. I don't remember how long it was; I know it was not a great while though.
53. Are you able to state when you first saw it with reference to the date it bears?
Ans. The first time I saw it was when it was referred to our committee and I took it out of the committee's box.
54. Was that at the same time the ordinance itself was referred to your committee?
Ans. Yes, that was at the same time.
55. State whether or not you, and the other members of your committee, had that document before you during your deliberations?
A. Yes sir; and also the ordinance.
56. State whether or not you, as a member of that committee, in arriving at your judgment believed the statements and representations of that petition to be true?
Ans. I did.
57. State whether or not you believed, that if the ordinance were granted to the complainant company, as then being asked, the representations made in that exhibit would be carried out in good faith?
Ans. I certainly did.
58. What, if any, influence did those statements and representations have upon you in determining the course you should
1185 pursue in arriving at your judgment as to the report your committee should make and the report they did make?
Objected to as incompetent and immaterial.
A. In the first place I understood that the old company had a perpetual franchise and unless we had some relief by getting another company in here, I understood, and really felt so myself, that we certainly would not have anything different from the old company unless we had some competition, and we ought to have it. That is the way I felt about it and that is why I made the report.
59. What influence had the statements and representations contained in Exhibit "19" in determining the report you should make and did make to the council?
Objected to same grounds.
A. Because I believed the statement would be carried out.
16. Did those statements and representations influence your judgment or not?
(Objected to same grounds.)
A. Not a bit except we expected to get a new gas plant.

61. And you believed them to be true and they would carry them out in good faith?

(Objected to same grounds.)

A. Yes sir.

62. Who did those gentlemen, whose names you have mentioned as being present at the time of your committee meetings, state would be benefited by competition of the character which they proposed to introduce into the Peoria territory?

Objected to as incompetent and immaterial.

A. The gas consumers of Peoria in general.

63. You voted in favor of the passage of the ordinance granting the company a franchise, did you?

Ans. Yes sir.

64. Upon what was your vote based?

Objected to as incompetent and immaterial.

A. Why on the same opinion that the report was based on; I thought it would be a good thing for the city of Peoria.

1186 Cross interrogatories by Mr. ABBOTT:

1. There was considerable talk on the streets and among business men with reference to this ordinance while it was pending before the council, was there not?

Ans. Yes sir.

2. And did it not appear from that talk in a general way that there was a considerable public demand for the passage of this or some similar ordinance?

Ans. Yes sir.

3. Did you have any talk with any of the stockholders, or those interested in the company, outside of those two committee meetings about which you have testified, which Sumner R. Clarke and Theodore Miller attended?

Ans. No sir.

4. Do you remember when that first meeting was held?

A. No, I don't remember the date.

5. About when was it with reference to the passage of the ordinance?

A. It would not be over two or three weeks before it, that the first meeting was held, and the last meeting of the committee was held on the day the ordinance was passed or the day before.

6. You don't remember exactly whether it was on the same day or the day before?

Ans. No I do not.

7. Was the ordinance passed at the same meeting at which your report was presented?

A. I am not certain about that but think it was; I am not cer-

tain whether it went over under objections or not; if it did it w
not passed until the next regular meeting.

8. To refresh your recollection, I will ask you if it did not, i
fact, go over on the objections of Mr. Gorman and Mr. Powell?

A. Come to think about it, I believe it did go over one meetin

9. But the two meetings at which Mr. Clarke and Mr. Miller wer
present was before the ordinance was presented?

1187 A. Yes sir.

10. Have you any independent recollection of the date a
which the ordinance was passed?

Ans. I have not.

11. Are you sure the paper marked "Exhibit 19" was not filed
or presented to the council on the same day on the evening of which
the ordinance was passed?

Ans. I think not.

12. Both these committee meetings were held in your committee
room in the city hall?

Ans. Yes sir.

13. I think you stated as a part of the talk there that there was a
good deal said with reference to the old company overcharging peo-
ple or the practice of the old company of charging the consumer for
service pipe from the main into his premises as well as the rates
charged for the gas itself was talked about?

A. Well, it was talked of, as I stated before, but I could not recol-
lect the language used.

14. But that was the subject of discussion at that time?

A. Yes sir.

15. Was not a considerable portion of that discussion devoted to
questions with reference to whether if an ordinance were granted
the company would actually go ahead, build a plant and operate it?

Ans. Yes sir.

16. They did build a plant, did they not?

A. Yes sir, they did or somebody else did, the plant was built,
anyway.

17. Was that a meeting at which this matter of competition as to
rates was discussed?

A. It was practically the same thing at all the meetings we had
about it; we talked about the same things over and over.

18. And the statement with reference to that, as I understood
you, were that the competition would naturally reduce the price to
some extent?

Ans. Yes sir.

1188 19. At that time the company had not commenced the
manufacture or distribution of gas?

Ans. No sir.

20. And they had no plant installed or in operation?

A. No sir.

31. Did either Mr. Miller or Mr. Clarke, in either of those meet-
ings, make any promise as to the price which their company would

charge for gas outside of their representations, opinion or belief that competition would naturally reduce the price of it?

A. Well, not any more than they told us there certainly would be cheaper gas, that is, Mr. Miller did, and the chances were gas could be procured for half the price it was at that time but he did not say they would do it; it was talked about in a general way.

22. Then the further talk was the insistence of the committee, as I understand it, that this was a *bona fide* application, that they would build a plant and not sell out to the old company?

A. Yes, that was the idea.

23. As I recollect your testimony, the matter as to whether it was to be Peoria capital exclusively or a general stock company was not discussed?

A. No, except they came in and said these are all Peoria people and business men going into it.

24. Referring to the list of people they had?

Ans. Yes sir.

And further the witness saith not.

ROBERT KELLERSTRASS, called on behalf of defendant, being first duly sworn according to law, deposes and says:

Direct examination by Mr. MANSFIELD:

1. State your name and residence?

A. Robert Kellerstrass, Peoria, Ill.

1189 2. How long have you resided in Peoria?

A. Over 41 years—all mi life.

3. What business are you engaged in at the present time?

A. I am in no business at present except city oil inspector.

4. Were you a member of the city council during March and April, 1899?

Ans. Yes sir.

5. Do you remember anything about the pendency of the ordinance before the city council granting to the People's Gas & Electric Co. the right to lay its mains in the streets of the city of Peoria?

Ans. Yes sir.

6. Look at the paper now shown you marked "Exhibit 19" and state whether or not you knew at the time of the pendency of that ordinance the gentlemen whose names appear upon that document?

A. Some of them.

7. Who did you know personally on that list?

A. Theodore Miller and Henry Sandmeyer; those are all I was personally acquainted with, the other gentlemen on the list I knew by reputation.

8. What was the financial reputation of Henry Sandmeyer in the

city of Peoria at the time this ordinance was pending before the council?

A. So far as I know, he was one of the best financial men in the city.

9. What was the reputation of Sumner R. Clarke in the city of Peoria as to his financial ability?

A. Good so far as I know; he was considered to be a man of wealth.

10. What was the financial reputation of Ben Warren, Jr., in the city of Peoria?

A. In my estimation it seemed to be equal to any of the others.

1190 11. Did you know the financial reputation of Geo. H. Littlewood?

Ans. Not any more than he was interested in a bank.

12. Did you know anything about the financial reputation of Ferd Luthy?

Ans. About the same as the balance of them; they all seemed to be up in financial standing.

13. What do you mean by the balance of them, those you have testified about?

Ans. Yes sir.

14. What was the financial reputation of C. C. Clarke in the city of Peoria at that time?

Ans. It seemed to be good.

15. What was the financial reputation of Robert D. Clarke in the city of Peoria at that time?

Ans. Good.

16. What was the reputation of the gentlemen, whose names appear upon Exhibit "19," with reference to their business integrity in the city of Peoria at the time of the pendency of this ordinance before the council?

A. So far as I know, first class; they were the best of our citizens financially.

17. At the time of the pendency of this ordinance before the city council did you have any conversation with any of the gentlemen whose names appear upon Exhibit "19," with reference to the passage of this ordinance, if so with whom?

A. Yes sir, with Theodore J. Miller.

18. What, if any, representations did Mr. Miller make to you at that time in regard to the passage of this ordinance?

Objected to as incompetent and immaterial.

A. He said it would be a great thing for the city, would give employment to people down in my locality and that we would have cheaper gas.

19. Did he or not in the course of the conversation you had with him make any representations as to what the price of gas would be

if a franchise or license was granted to this company as
1191 compared with the prices then charged by the old company?

Objected to as incompetent and immaterial.

A. I could not state whether he mentioned any prices or not; there was a good deal of conversation between the members of the council and talk about 75 cent gas, but as to whether Mr. Miller made any statements of that kind or not I could now state.

20. What, if any, representations did he make to you that would result from a competitive company entering into the manufacture of gas in Peoria?

(Objected to same grounds.)

A. As I stated before he said we would have cheaper gas.

21. Were you familiar at that time with the prices charged for gas in the city of Peoria by the old company?

A. No, not to my recollection.

22. Did you have any conversation with any other gentlemen whose name appears upon that list, relative to the passage of that ordinance?

A. I had an introduction to Sumner R. Clarke by the committee at that time; I remember being introduced to Mr. Clarke because it was the first introduction I ever had to him.

23. What, if anything, did he say to you relative to the ordinance that was then pending before the city council?

Objected to as immaterial and incompetent.

A. I cannot state at the present time.

24. Were you present at any conversations that were had between the aldermen at or about the time of the passage of this ordinance relative to its passage?

A. Yes sir, we generally met the night before the council meeting and talked the matter over.

25. Was Theodore J. Miller present at the meetings when these conversations were had between the various aldermen?

A. I will not be positive; I know he was up to the city
1192 hall at different times and he must have been at the committee meeting the night of the council meeting; he introduced Mr. Clarke to me at one of those times.

26. What was the nature of the conversation had there between the aldermen relative to the passage of this ordinance?

Objected to as incompetent and immaterial.

The MASTER: I don't think it competent unless it is made to appear that a representative of this company was present.

Mr. MANSFIELD: I would like to have the question answered.

The MASTER: The witness may answer subject to the objection.

A. It was in regard to this ordinance about getting cheaper gas

and the improvements they would make here, Peoria capital being used, etc.

27. In the course of the conversation you had with Mr. Miller relative to the passage of this ordinance, state whether or not anything was said relative to the capital that would be invested in that company?

(Objected to as incompetent and immaterial.)

A. He said they were all Peoria people who were interested in it and it was Peoria capital that was going to build it.

28. In the course of the conversation had between the various aldermen at that time, what, if anything, was said as to the effect of the passage of this ordinance on the rates that were then being charged by the old company for gas furnished in the city of Peoria?

Objected to as incompetent and immaterial.

The MASTER: I don't think it competent unless it appears that representatives of the company were there and acquiesced in it by silence or otherwise, still, if you want the question answered, the witness may answer subject to the objection.

A. The sentiment seemed to be we would have cheaper gas.

29. Do you know whether or not Mr. Miller was present on the night that this ordinance was passed by the city council?

1193 A. I do not; he had been up there so often with other ordinances that I don't recollect.

30. What, if any, effect did the representations made by Mr. Miller have in the formation of your judgment with regard to the vote cast by you upon the passage of that ordinance?

Objected to as incompetent and immaterial.

A. I voted for it in order to get cheaper gas, because of the statements they made that competition would reduce the price of gas.

31. Did or did not the representations of Mr. Miller have any effect on your arriving at a decision to vote in favor of the ordinance?

(Objected to same grounds.)

A. Why, it had the effect—I took it we were going to get cheaper gas and give employment to Peoria labor, which you know it did, and I voted for it.

32. At the time Mr. Miller made these representations to you did you believe those statements so made by him to be true?

A. Yes sir.

33. Look at Exhibit "19" now shown you and state whether or not you were familiar with the contents of that exhibit at the time of the passage of the ordinance by the city council?

A. I was.

34. Was that exhibit before the council at the time or previous to the passage of the ordinance?

Objected to as incompetent and immaterial.

A. I think it was.

35. Did you at that time believe the statements and representations contained in Exhibit 19 to be true?

Ans. I did.

36. Did you at that time believe that the people, whose names appear upon that exhibit, were capable of carrying those representations into effect?

Ans. Yes sir.

1194 37. In the course of the conversations that were had by the various aldermen was anything said relative to the capital which would be invested in this company?

Objected to as incompetent and immaterial.

The MASTER: I do not see the materiality of it but the witness may answer subject to the objection if counsel desires to press it.

Mr. MANSFIELD: I would like to have it answered.

A. It was said it was Peoria capital and these parties who signed the petition would invest and I believed they were the only ones that were interested in it.

38. How long had you known by reputation the gentlemen whose names appear upon Exhibit "19"?

A. I have known Mr. Sandmeyer over 30 years; when I started in my trade 26 years ago I used to deal with him, and the others I have known of all the way from 10 to 15 years.

39. State whether or not the representations and statements contained in Exhibit "19" influenced you in determining upon the manner in which you would vote upon the ordinance that was then pending before the city council?

Objected to as incompetent and immaterial.

A. Yes sir.

40. Did you believe when this ordinance was introduced, if the council were to pass it, that the complainant company would become a competitive company in the city of Peoria?

Ans. Yes sir.

Cross interrogatories by Mr. ABBOTT:

1. Did you have more than one talk with Mr. Miller?

A. Yes, I had frequent talks.

2. Do you remember when the first one was?

A. No I do not except it was during the time this ordinance was pending before the council.

3. About how long was it before the ordinance was finally
1195 passed?

Ans. Probably two or three weeks.

4. And then there were conversations at various intervals during the time the ordinance was pending?

A. Yes sir, I met him up in the city hall several times and met him on the street.

5. The talk was always of the same general character, was it. As I understand it, you say that in none of those talks did Mr. Miller make any promise, or definite statement, as to the price which his company would expect to charge for gas?

A. Not a definite price only cheaper gas.

6. There was similar talk in a general way that the formation of a new company would have the effect of cheapening the price of gas?

A. Yes sir, 75 cent gas had been spoken of but I could not say whether Mr. Miller made that remark or not; that was talked of around in the city hall among the aldermen.

7. I believe you stated with reference to these various discussions among the aldermen that you are not positive whether Mr. Miller, Mr. Clarke or any other representative of the company were present?

A. No sir. Well, Mr. Miller was present up there during the time of some of the meetings but not all of them. I met him in the city hall during that time.

8. But you are not positive at which meetings he was present?

A. No sir.

9. Was not there considerable talk between Mr. Miller and yourself to the effect that the granting of this ordinance, if the company should go ahead and erect its plant, would furnish employment to a large number of men?

Ans. Yes sir.

10. Is it not a fact that your attitude on the ordinance was considerably influenced by *y*hat fact?

Ans. Yes sir.

1196 11. Was it not of more consequence to your mind that Peoria labor should be given employment and the money paid to them, than the particular source from which that money came, whether it was Peoria capital or outside capital?

Objected to as incompetent and immaterial.

The MASTER: I don't think that competent.

12. It was a matter of discussion and of important consideration, was it not, that the company, if the ordinance was granted, should actually go ahead and build a plant?

Ans. Yes sir.

13. And not merely obtain an ordinance for the purpose of sale

A. I should not have voted for it if I had thought they were going to sell out.

14. And your attitude and your vote, if I understand you correctly, were influenced largely by your belief that if an ordinance were passed the company would go ahead, erect a plant and distribute the money to Peoria labor?

Objected to as assuming something the witness has not stated.

A. Yes sir.

Re-direct interrogatories by Mr. TICHENOR:

1. Do you mean to say you would consider it of more importance that Peoria labor should be employed than that the price of gas should be reduced?

Objected to as incompetent, immaterial, not proper re-direct; a statement of something the witness has not said and no questions asked of that kind.

A. No sir.

2. What were the principal reasons that induced you to support the ordinance in question?

Objected to as incompetent, immaterial and not proper re-direct

The MASTER: I think — was gone over in chief.

Mr. TICHENOR: There is some doubt at least in my mind as to what he stated on cross examination.

1197 The MASTER: He may answer subject to the objection then.

A. Cheaper gas and employment of Peoria labor.

And further the witness saith not.

JAMES D. PECK, called on behalf of defendant, being first duly sworn according to law, deposes and says.

Direct examination by Mr. TICHENOR:

1. State your name and residence?

A. James D. Peck, Peoria, Ill.

2. How long have you been a resident of Peoria?

A. Since 1865.

3. In what line of business are you now engaged and have been for some years past?

A. I carry on a painting business and have an art store on Main street.

4. How long have you been engaged in substantially the same line of business here?

Ans. 20 or 25 years.

5. State whether or not you at one time were a member of the city council of the city of Peoria?

Ans. Yes sir.

6. Were you at the time of the passage of the ordinance granting to the complainant company a franchise or license to use the streets for the purpose of constructing a gas plant?

A. Yes sir.

7. State whether or not you remember the fact that the ordinance was submitted to the council and was pending for sometime before its passage?

Ans. Yes sir.

9. Where were you during the time it was pending?

A. In Peoria, I think.

10. State whether or not you attended all the meetings of the city council that were held during the pendency of that ordinance?

A. I think I did.

1198 11. State whether or not about the time the ordinance was introduced you knew the gentlemen who were supposed to be interested parties in the new enterprise?

Ans. Yes sir.

12. Do you at the present time remember substantially who they were?

Ans. I know Sumner R. Clarke, Robert Clarke, Mr. Bailey and Mr. Miles.

13. Look at Exhibit "19" now shown you and state whether or not the gentlemen, whose names appear upon that paper, are the ones then purporting to be interested in the new company?

A. Yes sir, I think I know all those gentlemen.

14. For how long a period of time had you known them in a general way?

A. Had known most of them for 25 years, if not all of them.

15. Did you at the time this ordinance was pending know of their reputation and standing both financially and as to business integrity in the city of Peoria?

Ans. I think so.

16. What was that reputation?

A. They were considered well off and good business men.

17. With how many of the gentlemen, whose names appear on Exhibit "19," did you convers- relative to this ordinance during its pendency if any?

A. I think I spoke to Mr. Clarke and Mr. Bailey and possibly to Mr. Miles.

18. In your interview with Mr. Clarke, who first opened the subject and under what circumstances?

A. I don't know that I could tell; I often met Mr. Clarke and sometimes went over to his office and sometimes he came to my office, and I know we talked about the gas ordinance to be passed.

19. Where is your office with reference to his?

A. Right across the street and was at that time.

20. Do you remember at this time what passed between 1199 you and Mr. Clarke relative to that subject.

Objected to as incompetent and immaterial.

A. No, I don't think that I do.

21. Do you recall what particular features of the gas ordinance were mentioned by either of you?

Objected to same grounds.

A. We talked about it in a general way; I don't know anything in particular that was brought up.

21. Under what circumstances did you meet Mr. Bailey with reference to this question?

A. I was in his office and spoke to him about it, and we talked about it a few minutes.

22. What was the nature of the conversation that passed between you?

(Objected to as incompetent and irrelevant.)

A. I talked with him about his going into the gas business I think; he said he thought he would go into the business, that there was a good opening here; I could not state just what the conversation was, but it was nothing in particular.

23. What, if any statement, did Mr. Bailey make to you with reference to possible benefits to be derived by the citizens from the institution of a new company in the field?

Objected to as incompetent and immaterial.

A. I don't think he made any.

24. You knew at that time, did you, that he was one of the interested parties?

Ans. Yes sir.

25. Are those the only conversations within your recollection you had with any of the gentlemen interested pertaining to this subject?

A. Yes sir, unless I spoke to Mr. Miles about it, and that I don't recollect now; I would often meet him on the cars going home and I think we talked about it, but I could not state anything we said in particular.

1200 26. What did you understand during the pendency of the ordinance with respect to the object of the new company coming into the Peoria field?

(Objected to as incompetent and immaterial.)

The MASTER: I suppose your question calls for his understanding he gained from these men?

Mr. TICHENOR: Yes sir.

A. Their purpose in coming here was to manufacture gas.

27. Was it for the purpose of competing with the old company in the Peoria territory?

(Objected to same grounds.)

A. Yes sir.

28. At the time this ordinance was under consideration by the city council, how long had you known of the old company then in operation here?

A. I had known of it a good many years, probably 20 years.

29. State whether or not you knew the gentlemen who were prominently identified with it and who had been for years past?

A. Yes sir.

30. What was their standing financially in this community?

Objected to as incompetent and immaterial.

A. They had a good reputation financially and morally, too, I guess, most of them.

31. At that time what territory did you understand the new company proposed to occupy as compared with that then covered by the old company?

(Objected to as immaterial.)

The MASTER: I think you ought to limit the inquiry to the understanding the witness gained from persons interested in the new company or discussions on the subject in the council chamber.

Mr. TICHENOR: There would not be much discussion in the council chamber, there might be in the committee room.

The MASTER: Or in the committee room of the council.

1201 A. I supposed they were going to lay down gas pipes all over the city and compete with the old gas company; that was my understanding.

32. State whether or not from the sources of information indicated you understood that the new company was coming in here for the purpose of entering into competition with the old company in the production and furnishing of gas?

Objected to as incompetent and immaterial, especially in view of the testimony of the witness in the early part of his examination.

The MASTER: The witness may answer limiting his answer to such information as he gained by conversations with the interested parties or in the action of the council.

A. My idea was they were going to compete with the other company in the manufacture of gas.

33. What if any representations were made to you by any of the interested parties, or by members of the council, with respect to the benefits to be derived by the citizens of Peoria from the organization and operation of a competing company?

Objected to as incompetent and immaterial.

The MASTER: I think the question is part competent and in part incompetent.

Mr. ABBOTT: I do not see how the company could be bound by representations made by members of the city council to each other.

The MASTER: The master has already indicated his opinion on that subject; in the absence of any representative of the company, it would not be bound by any declaration made by aldermen or anybody else.

Mr. TICHENOR: I would like to have the question answered.

The MASTER: He may answer subject to the objection.

A. Why, they would have cheaper gas, gas would be
1202 manufactured cheaper; we would not have to pay so much for it.

34. Look at Exhibit "19" now shown you and state whether or not you examined that document during the time the ordinance in question was pending before the city council?

A. I think I did.

35. State whether or not at the time you saw and examined that document you believed the statements and representations contained therein to be true?

Ans. Yes sir.

36. State whether or not you believed at that time if the complainant company were granted an ordinance or license by the city, as then asked, the representations embodied in that document would be carried out in good faith?

Ans. Yes sir.

37. State whether or not you at that time believed that the gentlemen who purported to be interested in it were financially able to carry out the representations made in that document?

A. I think they were; I know they were as a body and I thought so at that time.

38. What did you know of them with regard to their wealth?

A. I thought they were all considered well off; I don't know so much about Mr. Sandmeyer as I do about some of the others, viz: the Clarkes, Bailey and Littlewood.

39. State whether or not the document marked Exhibit "19" had any influence with you in arriving at a conclusion as to the course you should take with reference to the ordinance when it was put upon its passage?

Objected to as incompetent and immaterial.

A. I think it did.

40. How did you vote upon that ordinance?

Objected to same grounds.

A. I voted for the passage of it.

41. Do you remember whether or not Theodore Miller was
1203 present in the council during the discussion concerning the ordinance in question?

A. I saw him there but I don't know whether he was there that night; I have seen him in there.

42. Do you remember on how many occasions the ordinance came up for discussion before the council?

A. I think it was three times anyway, if I recollect right.

Cross interrogatories by Mr. ABBOTT:

Mr. ABBOTT: We waive cross examination of this witness and sire to enter a motion at this time to exclude all of his testimo except the first part of his examination, which relates to conver tions had with Mr. Clarke, Mr. Bailey and Mr. Miles, on the grou that the questions put were incompetent, immaterial and irrelev and that the answers to the same were not responsive and that view of the testimony of the witness in the first part of his exa nation his testimony is entirely his own opinion and ideas, based general rumor or at least not on positive statements of the part interested, and in general is not pertinent to the issues in the cas

The MASTER: As I have already indicated to counsel, I can give any further time to the hearing of testimony in this case some weeks on account of my personal business. Counsel a familiar with the facts that our circuit court comes in on the 31st March with a jury, and I have several cases for trial in which I a counsel, besides other business which I have to attend to. H would it suit counsel to adjourn this hearing until the 14th of Apr 1902?

Mr. RITCHER: Cannot we put in a couple of days during the we previous to the 31st of March?

1204 Mr. TICHENOR: We cannot get through with our eviden here in couple of days.

Mr. MANSFIELD: I have pending in the county court of th county quite a number of improvement cases and it is absolute necessary that those cases be disposed of as soon as possible in ord that the improvements can be made during the summer months an between now and the opening of the circuit court is about the on time I have to take up those cases and dispose of them, and it is a solutely necessary that they be attended to.

The MASTER: I will then adjourn the further hearing of this ca until the 14th of April, 1902, at 10 o'clock a. m., to meet at th United States court room, Government building, in the city of Peori unless I advise counsel otherwise.

1204*a* EXHIBIT "18." I. C. Pinkney, Master.

STATE OF ILLINOIS, DEPARTMENT OF STATE.

James A. Rose, secretary of state, to all to whom these presen shall come, Greeting:

Whereas, a statement, duly signed and acknowledged, has bee filed in the office of the secretary of state on the 20th day of March A. D. 1899, for the organization of the Pleoples Gas and Electri Company under and in accordance with the provisions of "An ac concerning corporations," approved April 18, 1872, and in force Jul 1, 1872 and all acts amendatory thereof, a copy of which statemen is hereto attached,

And whereas, a license having been issued to O. J. Bailey, Philo B. Miles, Sumner R. Clark, Henry Sandmeyer Sr. B. Warren Jr. Theodore J. Miller, and John Wilson, as commissioners to open books for subscription to the capital stock of the said company.

And whereas, the said commissioners have on the twenty-first day of March A. D. 1899, filed in the office of the secretary of state a report of their proceedings under said license, a copy of which report is hereto attached.

Now therefore, I, James A. Rose, secretary of state, of the State of Illinois, by virtue of the powers vested in me by law, do hereby certify, that the said Peoples Gas and Electric Company is a legally organized corporation under the laws of this State.

1204*b* In testimony whereof, I, hereto set my hand and cause to be affixed the great seal of State. Done at the city of Springfield, this 21st day of March, in the year of our Lord, one thousand eight hundred and 99, and of the Independence of the United States, the one hundred and 23rd.

[Seal of the State of Illinois, Aug. 26th, 1818.]

JAMES A. ROSE,
Secretary of State.

STATE OF ILLINOIS, } ss:
Peoria County, }

To James A. Rose, secretary of state:

We, the undersigned, O. J. Bailey, Philo B. Miles, Sumner R Clarke, Henry Sandmeyer, Sr. B. Warren, Jr., Theodore J. Miller, and John Wilson, propose to form a corporation under an act of the General Assembly of the State of Illinois, entitled "An act concerning corporations" approved April 18, 1872, and all acts amendatory thereof, and for the purpose of such organization, we hereby state as follows to-wit:

1. The name of such corporation is Peoples Gas and Electric Company.

2. The object for which it is formed is to manufacture, buy sell, distribute and deliver gas for light, heat and power; to manufacture,—generate, buy, sell, distribute and deliver electricity for light heat and power: to manufacture sell and deal in appliances for the use of gas and electricity in the production of light, heat and power or any of them: to possess gas and electric works, buildings,

1204*c* apparatus, pipes, mains, wires and all the property, privileges, powers, licenses and ordinances which may be required or used in said business; also to manufacture, buy, sell, and deal in goods, wares, and merchandise and the by-products arising from the manufacture and generation of gas and electricity; also to manufacture, generate, buy, sell, distribute and deliver steam and hot water for heat and power purposes.

3. The capital stock shall be five hundred thousand dollars ($500,000)

4. The amount of each share is one hundred dollars ($100.00)

5. The number of shares five thousand (5000).

6. The location of the principal office is in the city of Peoria, in the county of Peoria, State of Illinois.

7. The duration of the corporation shall be ninety nine years.

O. J. BAILEY.
PHILO B. MILES.
SUMNER R. CLARKE.
HENRY SANDMEYER, SR.
B. WARREN, JR.
THEODORE J. MILLER.
JOHN WILSON.

STATE OF ILLINOIS, }
County of Peoria, } ss:

I, W. I. Slemmons, a notary public in and for the said county and State aforesaid, do hereby certify, that on the 18 day of
1204*d* March, A. D. 1899, personally appeared before me O. J. Bailey, Philo B. Miles, Sumner R. Clarke, Henry Sandmeyer Sr., B. Warren, Jr., Theodore J. Miller, and John Wilson to me personally known to be the same persons who executed the foregoing statement and severally acknowledged that they executed the same for the purposes therein set forth.

In witness whereof, I have hereunto set my hand and seal, the day and year above written.

[SEAL.]

W. I. SLEMMONS,
Notary Public.

To James A. Rose, secretary of state of the State of Illinois:

The commissioners duly authorized to open books of subscription to the capital stock of the Peoples Gas and Electric Company, pursuant to license heretofore issued, bearing date the 20th day of March A. D. 1899 do hereby report that they opened books of subscription to the capital stock of said company, and that the said stock was fully subscribed, that the following is a true copy of such subscription, viz:

We, the undersigned, hereby severally subscribe for the number of shares set opposite our respective names to the capitol stock of the Peoples Gas and Electric Company, and we severally agree to pay the said company for each share, the sum of one hundred dollars at such time or times and in such installments as
1204*e* shall be required by the board of directors of said company.

Names.	Shares.	Amount.
F. T. Corning	100	10,000.00
Chas. C. Clarke	50	5,000.00
Chauncey D. Clarke	50	5,000.00
George H. Littlewood	50	5,000.00
Ferd Luthy	50	5,000.00
Rob't D. Clarke	50	5,000.00
Henry Sandmeyer, Sr	25	2,500.00
Benj. Warren, Jr	50	5,000.00
Philo B. Miles	25	2,500.00
Oliver J. Bailey	25	2,500.00
Theodore J. Miller	150	15,000.00
Sumner R. Clark	4375	437,500.00

That on the 20th day of March, A. D. 1899, at the office of Irwin and Slemmons, in the Niagara building in the city of Peoria Illinois, at the hour of 4-30 o'clock p. m. they convened a meeting of the subscribers aforesaid, to the following consent and waiver:

"We, the undersigned, being all the subscribers to the capital stock of the Peoples Gas and Electric Company of the city of Peoria Illinois, hereby respectively waive all time and notice as required by law and consent and join in a meeting of all the subscribers to the capital stock of said company, at the office of Irwin & Slemmons, in the Niagara building, in the city of Peoria, Illinois, on the 20th day of March, A. D. 1899 at the hour of 4-30 o'clock p. m. for the purpose of electing a board of directors for said company and
1204f the transaction of such other business as may properly come before such meeting.

F. T. CORNING. [SEAL.]
CHAS. C. CLARKE. [SEAL.]
CHAUNCEY D. CLARKE. [SEAL.]
GEORGE H. LITTLEWOOD. [SEAL.]
FERD. LUTHY. [SEAL.]
ROB'T D CLARKE. [SEAL.]
HENRY SANDMEYER, SR. [SEAL.]
BENJ. WARREN, JR. [SEAL.]
PHILO B. MILES. [SEAL.]
OLIVER J. BAILEY. [SEAL.]
THEODORE J. MILLER. [SEAL.]
SUMNER R. CLARKE. [SEAL.]

That said subscribers met at the time and place in said notice specified and proceeded to elect directors and that the following persons were duly elected for the term of one year viz.:

Sumner R. Clarke, Benj. Warren, Jr., T. F. Corning, Oliver J. Bailey, George H. Littlewood, Theodore J. Miller, Philo B. Miles,

JOHN WILSON,
HENRY SANDMEYER, Sr.,
SUMNER R. CLARKE,
PHILO B. MILES,
B. WARREN, Jr.,
THEODORE J. MILLER,
O. J. BAILEY,
Commissioners.

STATE OF ILLINOIS, } ss:
County of Peoria, }

On this 20th day of March, A. D. 1899 personally appeared before me, a notary public in and for said county, in said State, O. J. Bailey, Philo B. Miles, Sumner R. Clarke, Henry Sandmeyer Sr., B. Warren, Jr., Theodore J. Miller, and John Wilson, and made oath that the foregoing report by them subscribed is true in substance and in fact.

[SEAL.]

W. I. SLEMMONS,
Notary Public.

1204*g* STATE OF ILLINOIS, } ss:
Peoria County, }

I, John Johnston, recorder of deeds, within and for the said county and State aforesaid, and keeper of the records of said recorder's office, do hereby certify that I have compared the foregoing copy of incorporation: Peoples Gas and Electric Company dated March 21, 1899, filed March 21, 1899, at 2-40 p. m. Recorded in vol. 4 of Corp. page 598 with accompanying certificate, with the original record in my office, and found the same to be a true and correct transcript of the whole of such record.

Witness my hand and official seal at Peoria, this 15th day of February A. D. 1902.

[SEAL.]

JOHN JOHNSTON,
Recorder of Deeds.
—— ——, *Deputy.*

1204½ Vol. 5, Schedule "B." Israel C. Pinkney, Special Master.

Filed Jun- 3, 1903. Marshall E. Sampsell, Clerk.

1205 UNITED STATES OF AMERICA, } ss:
State of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY }
vs.
CITY OF PEORIA. }

Testimony taken in the above entitled cause before Judge I. C. Pinkney, special commissioner, at the U. S. court room, Government building, in the city of Peoria, Illinois, on April 28th and 29th, and May 5, 6, 7, 8, and 9, 1902, as set forth in the following pages.

Index to Witnesses.

Names.	Direct.	Cross.	Re-D.	Re-cross.
Oden, Chas. V.	1206.	1216	1220	
Luthy, Ferd.	1221	1251	1252	
Hecht, Jacob.	1252	1255		
Gorman, Thos. N.	1258	1278	1278	
Buckley, Thos.	1279	1286	1315	1319
Eustace E. W.	1321	1354		
Barker. Geo. W.	1354			
Robb, John M.	1369	1383		
Miller, Theo. J. (re-called)	1384			
	1496			
Clarke, S. R. (")	1386			
	1457			
	1481			
Henebery. Mathew.	1398	1411	1417	1419
Robison, Leslie	1421	1428	1445	1448
Henebery, Matthew (")	1452	1452	1455	
Robison, Leslie (")	1455			
Luthy, Ferd (")	1456			
	1539			
Littlewood, Geo. H. (")	1474			
Miles, Philo B. (")	1498	1515	1516	
Bailey, O. J. (")	1516			
Clarke, R. D. (")	1529	1539		
Warren, Jr., Ben. (")	1547			
Little, F. W. (")	1557.			

1206 On Monday, April 14th, 1902, the further hearing of the case was adjourned by agreement between counsel until Monday, April 21, 1902, at 10 o'clock a. m.

On Monday, April 21, 1902, on account of the fact that Mr. Henry Mansfield, city attorney, was engaged in the trial of an important case in the circuit court of Peoria county, the case was adjourned from day to day until Thursday, April 24, 1902, when it was adjourned by the special commissioner until Monday, April 28, 1902, at 10 o'clock a. m.

United States circuit court room, Government building.

PEORIA, ILLINOIS,
MONDAY, *April* 28, 1902—10 o'clock a. m.

Parties met pursuant to the call of the special commissioner.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin and Mr. W. T. Abbott, appearing for complainant. Mr. Henry Mansfield and Mr. F. H. Tichenor appearing for defendant.

CHARLES V. ODEN, called on behalf of the defendant, being first duly sworn, deposes and says.

Direct interrogatories by Mr. TICHENOR:

1. State your name and place of residence?

A. Charles V. Oden, Peoria, Ill.

2. How long have you been a resident of Peoria?

A. 16 years.

3. In what business have you been engaged during that time?

A. I have been selling goods, principally typewriters for the major part of the time I have resided in Peoria.

4. What firm have you represented in Peoria in that capacity?

A. Wyckoff, Seamans & Benedict—the Remington Com-
1207 pany, and the Wagner Typewriter Company with the Underwood typewriter.

5. The first named company handles the entire product of the Remington Company?

Ans. Yes sir.

6. State whether or not you have ever been a member of the city council of the city of Peoria?

Ans. I have.

7. State whether or not you were a member of the city council of this city at the time of the passage of the ordinance granting a franchise or license to the complainant company to install a gas plant and use the streets and alleys of the city of Peoria for furnishing gas to the city and its citizens?

A. I was in the council when a gas franchise was passed; I don't know whether it was for complainant company or not.

8. What was the name of the company at that time, if you know?

A. Really, I could not say but I think it was the People's Gas & Electric Co.

9. Do you know whether or not it was the same company now engaged in this litigation?

A. It was understood to be by me.

10. How many gas companies have you ever known in the city of Peoria that have been actually engaged in the business?

A. Two.

11. What were they?

A. What I have always known as the old gas company, the Peoria Gas Light & Coke Co., and the People's Gas Company.

12. Do you know the present corporate name of the other company now operating in Peoria territory?

Ans. I do not.

13. Is it not the Peoria Gas & Electric Co.?

A. I could not say.

14. Was there more than one franchise for such purpose
1208 given by the city council of the city of Peoria during your incumbency of the office to which you have referred?

A. I think there was one given to J. Frank Aldrich.

15. Was there any work done under that within your knowledge?

A. No sir.

16. Was the plant constructed under the other ordinance to which you have referred?

Ans. Yes sir.

17. That is the same company which is now operating in Peoria territory, is it?

Ans. I think so.

18. How long had you been a member of the city council at the time that subject came up?

Ans. Nearly four years.

19. Do you remember the fact of the passage of the ordinance to which you have referred?

Ans. I do.

20. Do you also remember the fact of its pendency for some time?

Ans. Yes sir.

21. Have you any recollection at this time about how long it was pending before the council?

A. No, but some weeks, though.

22. What portion of the meetings of the council did you attend during the pendency of that ordinance?

A. I never missed a meeting during the four years I was a member of the council.

23. Do you remember how many times the subject came before the council meeting?

A. A number of times but I do not remember the exact number.

24. At the time the ordinance in question was presented, did you know personally any of the gentlemen purporting to be interested in it?

A. I knew most of them, if not all of them.

25. What was their standing and reputation both financially and for integrity at that time so far as your knowledge of them extended?

1209

Ans. I considered it the very best.

26. With which of those gentlemen then interested in the proposed new company or in the new company, if it had then been organized, were you acquainted, and for the purpose of refreshing your recollection you may look at Exhibit "19" in evidence in this case?

A. I know Sumner R. Clarke; Ben Warren, Jr.; H. Sandmeyer; George Littlewood; I knew C. C. Clarke; I know Chauncey Clarke; O. J. Bailey, Ferd Luthy; Philo B. Miles; Robert D. Clarke; F. T. Corning and Theo. J. Miller—all of them.

27. What was your understanding when that ordinance was presented, or during its pendency, as to the people who were to be interested in the construction and operation of the proposed new gas company and from what source did your information come?

Objected to as incompetent and immaterial.

A. I understood it was to be entirely a Peoria concern, composed entirely of Peoria men, and my source of information came from the parties purporting to be stock holders themselves as shown on this list, Exhibit "19."

28. Had you prior to the introduction of that ordinance done business with some of those gentlemen to whom you have referred?

A. Yes sir, most of them.

29. In the line to which you have referred in your testimony was it?

Ans. Yes sir.

30. State whether or not during the pendency of this ordinance you had any conversation with any of those gentlemen as to what was proposed to be accomplished?

Objected to as incompetent, immaterial and for the reason the complainant is a corporation and no one individual can say what the intent of the company might be after it was organized and its directors elected.

1210

A. Why, a number of those gentlemen came to me and talked over the situation and the claim was based largely on their personal interests and the welfare of Peoria and the fact that by granting the franchise the price of gas would be very much less.

31. State whether or not any of those gentlemen, in referring to the reduction in price that would follow the installation and operation of the new company in Peoria, any rates were mentioned at which such new company would furnish gas?

Objected to as incompetent and immaterial.

A. Yes sir, they did.

32. Are you able to say from your personal recollection who of those gentlemen did make any such statement?

A. Philo B. Miles, Theodore J. Miller and C. C. Clarke who is now dead.

33. What was said by those gentlemen in respect to that subject?

(Objected to same grounds.)

A. Their talk was that we would get gas at a very much less rate, and the rate suggested at that time as being sufficiently high was 75 cents.

Complainant objects to the foregoing answer as not responsive, incompetent and immaterial and moves the court to exclude it.

34. State whether or not their statements to you with reference to those rates pertained to fuel gas or gas for illuminating purposes, or to all gas to be furnished in the city of Peoria?

Objected to as incompetent and immaterial.

A. I don't think they specified; they just simply spoke of gas in a general way as being too high, as I remember it.

35. Do you know what the prices then were.

A. I think the price for illuminating gas was $1.35 per
1211 thousand and I think it was 75 cents or $1.00 for fuel gas; they were changing just about that time; I know while the ordinance was pending the price was changed.

36. State if the price changed during the pendency of that ordinance or just prior to its introduction did not pertain to illuminating gas and not to fuel gas? and if that change was not from $1.35 to $1.00?

Objected to as incompetent and immaterial.

A. I think it was and while I don't know I think Exhibit "19" is the paper that referred to it when presented to the council.

37. During any portion of the time covered by your residence in Peoria, have you been a consumer of gas?

A. Yes, during the major portion of the time.

38. Did you, either from your membership in the council or otherwise, know at that time substantially the territory covered by the Peoria Gas Light & Coke Co. in its service to consumers?

Objected to same grounds.

A. Why, yes, I think I did; it had the whole territory of Peoria.

39. How was it with reference to the suburbs available for gas consumption?

Ans. I don't know.

10. Do you know what the capacity of the old company was at that time with respect to the demand for gas in the Peoria territory?

(Objected to same grounds.)

A. No sir.

41. Did you know the people prominently identified with the Peoria Gas Light & Coke Co. at the time the ordinance, to which you have referred, was pending before the council?

Objected to as immaterial.

A. I knew two or three of them; I knew Mr. Coffey, Mr.
1212 Farrelly and there may have been others connected with it that I am not aware of.

42. Did you know Leslie Robison and Mathew Henebery?

A. Yes sir.

43. Did you know Wm. A. Herron?

Ans. Not personally.

44. Did you know the general reputation and standing of those gentlemen financially and otherwise in Peoria at that time?

Objected to as incompetent and immaterial.

A. Why, it was good in both respects.

45. How many times, if at all, did any of the gentlemen, whose names are affixed to Exhibit "19," confer with you concerning the ordinance in question during its pendency in the city of Peoria?

(Objected to same grounds.)

A. Well, a great many times.

46. What steps relative to the ordinance and the introduction into the field of a competing gas company were discussed between you and any of those gentlemen at the different times mentioned so far as you now recollect?

(Objected to same grounds.)

A. The argument was based largely on the fact that we were now in the hands of a company having a monopoly, as it was called, having its charter from the State, and that the city had no control over it at all; that there was no way to reduce the price of gas except to furnish competition and that that was the object of the men whose names were attached to Exhibit "19" to bring about.

47. State whether or not those gentlemen declared at any of those times that they were going into the field for the purpose of installing a competing company and it would be so operated?

Objected to same grounds.

The MASTER: State what was said on that subject, if anything.

A. Yes sir, they did.

48. State whether or not in the deliberations and discus-
1213 sions in the council and with these gentlemen, whose names are affixed to Exhibit "19" or any of them, you participated to a considerable extent or otherwise?

(Objected to as immaterial.)

A. I think I took an active part in it.

49. During what period of time covered by the pendency of that ordinance did you actually participate in questions relative to the passage of the ordinance and the proposed installation of the new company. In other words, was it for a limited time, or a considerable portion, or all the time?

Objected to as incompetent and immaterial.

A. I was not as active at any time as I was the last night, the night the ordinance was passed; at that time I was understood to be the spokesman for the company.

50. Who, if anyone, placed that subject in your hands and what were the circumstances under which it was done?

Objected to as incompetent and immaterial.

A. I don't know just how it was; it was generally understood I was favorable to the passage of the ordinance and the subject was discussed by various ones, principally the attorney, Mr. Irwin.

51. Through what channel had knowledge of your attitude in that respect come to the people interested in the new gas company?

Objected to same grounds.

A. The fact that I had expressed myself on numerous occasions and had shown a willingness to support it from the time it was presented.

52. State whether or not you had made such expressions to the gentlemen then interested in the new gas company?

Objected to same grounds.

A. I had.

53. State whether or not on the day or evening immedi-
1214 ately preceding the passage of this ordinance or within a short time before you had any conversation with any of the gentlemen, whose names are affixed to Exhibit "19," with respect to the passage of the ordinance in question?

(Objected to same grounds.)

A. Well, I don't know as to the limit of time; the subject was being discussed continually by everybody and I heard it right along up to the time of going to the meeting.

54. State whether at any time during the pendency of that ordinance any gentleman, whose name is affixed to Exhibit "19," requested you to urge its passage when it came up before the council?

Objected to as incompetent and immaterial to the issues in this case.

A. Yes, that was the subject of discussion; they urged my support of it.

55. State whether or not any reasons were given by them, other

than those which you have already stated, for urging you to support the ordinance and assist in its passage?

Objected to same grounds.

The MASTER: The witness may state what they said in that respect.

A. They said we were paying too much for gas, that we had no control over the old company, that the new company was composed entirely of local business men, men whose reputation was unquestioned—which was the case in my mind.

(The MASTER:)

56. Which one of the signers of "Exhibit 19" made those statements to you?

A. I have given the names before; as they come on the list here, C. C. Clarke was the first one; Mr. Bailey at one time spoke to me but only spoke to me once; Philo B. Miles two or three times; 1215 Robert D. Clarke a number of times and Theodore J. Miller every day.

(Mr. TICHENOR):

57. State whether you saw the paper "Exhibit 19" shortly after it was filed with the city clerk of Peoria?

Objected to as immaterial.

A. I saw it before it was filed, I think, and afterwards, that is, I heard it read in the council and I want to say it embodies the whole position I took in the matter; it contains the substance of all their comments with reference to it.

58. That is, their statements to you were substantially the same as are embodied in that exhibit?

A. Yes sir, and to at least one or two of them, I have forgotten which now, I suggested just such a statement; I do not mean to say that suggestion was the means of bringing about this petition but it was in harmony with my idea.

59. State whether or not you knew at that time, during the pendency of that ordinance, that any person outside of Peoria was interested, or was to become interested, in the new gas company for which the franchise and license was asked?

Objected to as incompetent and immaterial.

The MASTER: I don't think it materi-l but the witness may answer.

A. I was told it was entirely a Peoria concern and believed it; I had voted against another one on account of its being foreign capital.

60. State what if any influence the statements made by those gentlemen, as testified by you, in Exhibit "19," had in your reach-

ing a conclusion as to the course you should take and did take in the council with respect to supporting the ordinance?

Objected to as incompetent and immaterial.

A. It had everything to do with it.

61. State whether or not at the time of the passage of the
1216 ordinance in question and after Exhibit "19" had been prepared and presented to the council, you believed the statements and representations contained in Exhibit "19" were true?

Objected to same grounds.

A. I believed they were true; I had every confidence in the men whose names were attached and who were interested and the facts set forth in Exhibit "19" showing that the price of gas had already been reduced demonstrated it, and I felt it was absolutely the thing to do from the experience I had had with the men and the action already of the old company.

62. State whether or not during the time that ordinance was pending and after the presentation of Exhibit "19" to the council you believed in good faith that if the complainant company were granted a franchise and license to use the streets and alleys of the city of Peoria for the purpose of installing a gas plant that the representations embodied in that exhibit would be carried out in good faith?

(Objected to same grounds.)

A. I believed it absolutely.

Cross interrogatories by Mr. IRWIN:

1. I understood you to state in your direct examination that the price of illuminating gas prior to the presentation of the application of complainant company for an ordinance—franchise—as fixed by the old company was $1.35 per thousand cubic feet to consumers?

Ans. I said I thought so.

2. You do not remember what the price of fuel gas was at that time, do you?

Ans. No, I do not.

3. Is it not a fact that soon after the introduction of the ordinance in question in the city council the price of gas for illuminating purposes was reduced to $1.00 by the old company?

A. I think it was and that cut a very material figure in
1217 my position in the matter.

4. Is it not a fact that the old company about that time stated that if an ordinance was granted to the new company it would meet any competition or it would sell gas below the price that any other company could sell it?

A. Well, I don't know whether they made public statements to that effect or not but it was generally believed to be true. In fact, it was believed by me to be true or they would have to go entirely out of business.

5. Is it not a fact that prior to the introduction of this ordinance into the city council the old company charged consumers for laying service pipe into their premises from the gas main what was considered an exorbitant price?

(Objected to as immaterial.)

A. Yes sir.

6. Is it not a fact that prior to the introduction of this ordinance into the city council the old company charged consumers what was considered by consumers an exorbitant price for setting meters?

(Objected to as immaterial.)

A. I think that is true.

7. Is it not a fact that prior to the introduction of this ordinance into the city council the old company charged consumers a monthly meter rent of about 25 cents whether any gas was used or not?

(Objected to as immaterial.)

A. I think that is true also.

8. Is it not a fact that prior to the introduction of this ordinance and its consideration by the city council there was a great deal of public dissatisfaction with reference to the treatment of the old company towards its consumers?

Objected to as immaterial and incompetent.

A. Yes sir.

9. Is it not a fact that prior to the introduction of this
1218 ordinance into the city council and its consideration by the council the treatment of the public by the old company was considered arbitrary and unreasonable by many of its consumers and the public generally?

(Objected to same grounds.)

A. Yes, sir, those were the arguments advanced to me also.

10. I will ask you if prior to the introduction of this ordinance into the city council and its consideration by the council it is not a fact that the city council had considerable trouble with the old company in getting it to extend, lay or remove its pipes in the streets so as to accommodate public improvements and other underground pipes in the street?

(Objected to same grounds.)

The MASTER: I don't think that material.

Mr. IRWIN: I would like to have it answered.

The MASTER: He may answer subject to the objection.

A. We had considerable trouble, yes sir.

11. State if that trouble had not extended and continued during nearly all your time in the council at various times.

Objected to same grounds.

The MASTER: Same ruling.

A. Yes, but we had no more trouble in that direction than with the laying of pipes on all of them; it retarded public improvements right along with all companies that furnished underground service.

12. State if the city council did not have considerable trouble with the old gas company during the time you were a member of the council in getting it to extend its mains through territory reasonably well built up so as to accommodate and furnish gas to consumers?

Objected to as incompetent and immaterial and not the best evidence.

The MASTER: I do not see its materiality under the issues
1219 in this case but the witness may answer subject to the objection.

A. As a member of the city council, I had lots of trouble as each individual alderman did but the council as a body had nothing to do with it.

13. I will ask you if it was not considered by the several members of the city council that the action and arbitrary methods of the old gas company were unreasonable and had been for sometime?

Objected to same grounds and also as not cross examination.

The MASTER: I do not see the materiality of it, nor do I think it cross examination, but the witness may answer subject to the objection.

A. I don't think an expression of the council was ever brought out as members but as citizens of Peoria everybody thought that they were.

14. I will ask you if after the ordinance franchise in question was granted by the city council if the citizens of Peoria did not get their service pipes laid from the gas main into their premises without charge?

(Objected to as incompetent and immaterial.)

A. I think they did.

15. I will ask you if meters were not set without charge to the consumers?

(Objected to same grounds.)

The MASTER: He may state his personal knowledge on the subject.

A. There was one set in my place without charge.

16. Do you know of anyone being charged for the setting of a gas meter after that time?

(Objected to same grounds.)

A. Not in a direct bill but I think they get their pay for it in the price of gas now.

17. Is the price of gas now any higher than it was prior to the consideration of this ordinance by the city council?

A. It is much higher than they told me it should be.

18. Answer my question will you?

1220 A. What is it?

19. (Interrogatory 17 repeated to witness.)

A. I think not.

20. I understand you to say that Exhibit "19" represents substantially all the arguments or representations that were made to you by anyone that influenced you and secured your support for the ordinance in question as a member of the council?

A. Yes sir.

21. All the conversation- that you had, which you have related and referred to, with individuals were had prior to the date upon which the ordinance passed, were they not?

A. I think so but right up to the time of the passage of the ordinance.

Re-direct interrogatories by Mr. TICHENOR:

1. I think you stated on direct examination that at the time of the passage of the ordinance the price charged by the old company for illuminating gas was $1.00 and for fuel gas 75 cents?

A. No, I said, if I remember—at least this is what I want to say that a change came just at that time.

2. The change to which you refer was in the illuminating gas?

Ans. I think it was.

3. Were you a consumer of fuel gas at that time?

Ans. Yes.

4. Do you remember how long the price of fuel gas had been 75 cents?

Objected to as immaterial and not proper re-direct.

The MASTER: No, but he may answer subject to the objection.

A. I think it had been running for some time—several years.

5. What was the price to consumers of fuel gas and illuminating gas on the 18th day of September, 1900, and what has it been ever since?

Ans. I don't know.

1221 6. Do you know what it is at the present time?

A. No, I do not.

7. Are you a gas consumer?

Ans. I am; I think it is $1.00 per thousand for both illuminating and fuel gas.

8. And it has been $1.00 per thousand for all gas for sometime has it not?

Ans. Yes, I think so.

9. I understood you to state on direct examination that the statements made to you by the different gentlemen then interested in

the new company to the effect that it was entirely a Peoria enterprise, that Peoria men only were interested in it, influenced your judgment in arriving at your conclusion with respect to the course you should take with reference to the ordinance?

A. It did.

10. Then when you stated that all of the arguments that were brought to bear upon you were embodied in Exhibit "19" you had overlooked that item, had you?

Objected to as incompetent, immaterial and not re-direct.

A. I think I stated in answer to a previous question that the facts presented in Exhibit "19" was what influenced me because the names of those individuals attached thereto are part of the exhibit.

11. And the other matter was also considered by you and was one of weight?

Ans. It certainly was.

FERD LUTHY, called in behalf of defendant, being duly sworn, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. State your name and place of residence?

A. Ferd Luthy; Peoria, Ill.

2. What is your business?

1222 A. I am a banker and am also engaged in the wholesale farm machinery business.

3. How long have you been engaged in that line of business and where?

Ans. I think about 18 or 20 years; part of the time on S. Washington street and part of the time on Commercial street—within one block of the same place.

4. Those places are both in the city of Peoria?

Ans. Yes sir;

5. You have been a resident of Peoria for a great many years have you not?

Ans. Yes sir;

6. State whether or not the business to which you have referred during the years you have been engaged in it, has been of considerable magnitude or only small.

A. It has been of considerable magnitude.

7. Do you operate over a number of States?

A. Yes and have for some years.

8. As a banker, with what bank have you been identified and for how long a period of time?

A. With the Merchants National Bank of Peoria for some 15 years or more.

9. That is the bank of which Mr. Littlewood is cashier and h been for some years past?

Ans. Yes sir.

10. Were you one of the persons originally interested in the form tion of the complainant company?

A. I was offered the privilege of taking some stock in the com pany—a rather small amount—and I consented to do so. I took n active part in the formation of the company.

11. How long at that time had you been a consumer of gas i Peoria?

A. Upwards of 15 years; I don't know the exact number of years

12. State whether or not during that time you had known th people prominently identified with the Peoria Gas Light & Coke Co.

1223 A. I knew some of them; I don't think I knew all the stockholders.

13. Did you know its officers and manager—the people in charge? Ans. Yes sir.

13. Did you know their standing in Peoria financially and as to integrity at that time and had you known it for some years past?

A. I think I did.

14. What was such standing?

Objected to as incompetent and immaterial.

A. Financially they were considered very strong, and I think they would all carry out their contracts.

15. Who of the gentlemen, prominently interested in the old company, did you know personally?

A. I knew Mr. Coffey, Mr. Farrelly, Mr. Henebery—I believe all of those were officers of the company. I know Mr. Herron who, I think, was a stockholder and I think Phillip Zell's estate was a stockholder. I don't recall any others just at present.

16. Do you know Leslie Robison?

A. Yes, but I think he had sold his stock prior to the organization of the new company; he was formerly a stockholder and I know him very well.

17. You have known them all for a number of years?

A. Yes sir and the most of the gentlemen stand very high in Peoria and the integrity of most of them is unquestioned.

18. State whether or not prior to the time you were solicited to be a subscriber to the capital stock of complainant company you had been interested directly or -directly with any other gas company either in Peoria or else where?

Objected to as immaterial.

A. No sir.

19. Had you previous to that time had any connection 1224 with the gas industry at all?

(Objected to same ground.)

A. Only as a consumer.

20. What if any knowledge had you respecting the installing, operation and profits of gas companies at the time you proposed to become a subscriber?

(Objected to as immaterial.)

A. I had heard a number of times that the gas business was a profitable business; I was satisfied beyond question that the gas company here had made a good deal of money in the past and I thought the manufacturing of gas was a profitable business and in a growing city it would continue to be so.

21. Had you come in contact with that question elsewhere than in Peoria?

(Objected to as immaterial.)

A. I had heard of the gas problem in a number of cities; my information in that matter is hearsay and not from being directly interested, but I thought the statements were sufficiently reliable so that I believed the business was profitable.

22. By whom was the question of your becoming a subscriber to the complainant company presented to you?

Objected to as immaterial.

A. It was first presented to me by Mr. Littlewood who stated that Mr. Clarke had called at the bank to see himself and myself in relation to taking some stock in the proposed gas company; I was absent at the time and he presented the matter to me when he next met me.

23. That is the Mr. Littlewood who has testified in this case?

A. Yes.

24. You came in contact with Mr. Littlewood through your relations in the bank daily practically?

Ans. Nearly so, yes sir.

24. What, if any representations did he make to you at that time with respect to the questions under consideration?

Objected to as incompetent and immaterial.

1225 A. There was but very little objection made to me; he said they were talking of forming a new gas company and that Sumner R. Clarke was the party who had presented it to him and was one of the principals in the matter.

25. Did you at that time know what other gentleman proposed to become interested if the company should be organized?

A. I don't know that I did at that particular time but shortly after I became aware of a number of them.

26. For how long a period of time had you known the several gentlemen that signed the stock subscription list to complainant company?

A. I had known those gentlemen for quite a number of years.

27. Have you also had more or less to do with them in a business way?

A. More or less with some of them—others not so much.

28. Did you before becoming a subscriber have any conversation with Sumner R. Clarke with reference to the proposed enterprise?

Ans. I think I did.

29. State as accurately as you remember what that conversation was and if you had different conversations state them all?

Objected to as incompetent and immaterial.

The MASTER: I don't think it material but if you desire the question answered, the witness may answer subject to the objection.

Mr. TICHENOR: I do desire it answered.

A. I think I said to Mr. Clarke at the time we signed the subscription list that if this company were formed for the purpose of selling out its franchise I did not want to have anything to do with it, but if it was formed for the purpose of going into the gas business I would be glad to take the amount of stock that I had the privilege of taking and Mr. Clarke—I think this conversation was with Mr. Clarke—gave me to understand it was for the purpose of
1226 going into the business and not for the purpose of selling out.

30. Did you know at that time whether or not it was to be entirely a Peoria enterprise financed by Peorians?

Objected to as immaterial.

A. I think at that time I had been informed there was a Chicago party connected with the company who would be interested in it—Mr. Walsh of Chicago.

31. When was your information in that regard obtained with respect to the time you signed the subscription list?

Objected to as immaterial.

A. I think I understood that before I signed the subscription list.

32. From whom did that information come?

Objected to as immaterial.

A. I am not certain whether it was from Mr. Littlewood, Mr. Miller or who, but that was my understanding; I don't recall the particular person who gave me that information; it may have been Mr. Littlewood, Mr. Miller or Mr. Clarke, I am not certain which.

33. State whether or not the part taken by Sumner R. Clarke in the formation of the company was a prominent one?

A. Yes sir, it was a prominent one.

34. What other people, if any, were also active in the preliminary arrangement for the incorporation?

A. I think Theodore J. Miller along with Mr. Clarke.

35. Did you at that time know the financial standing of Theodore J. Miller?

Ans. Yes, I think so.

36. Did you also know Sumner R. Clark's financial ability?

A. Yes sir.

37. What connection, if any, had Mr. Clarke had with the Merchants national bank during any portion of the time you have been identified with it?

1227 A. He had been a director of the bank for quite awhile antidating this company.

38. You have been president of the Merchants national bank for some time?

Ans. Yes sir.

39. Do you remember about how many years?

A. I am not certain but would think 10 years at any rate.

40. You are still president of that bank?

Ans. Yes.

41. State whether or not your decision to become a subscriber to the capital stock of complainant company was based wholly upon your own judgment from your knowledge in a general way of the gas industry in Peoria for some years past, or whether you made further inquiries from any of the gentlemen then proposing to become interested in the new company?

Objected to as incompetent and immaterial.

The MASTER: I don't think it material.

Mr. TICHENOR: I would like to have it answered.

The MASTER: He may answer subject to the objection.

A. I think it was my own decision entirely.

42. State whether or not Sumner R. Clarke made to you any representations as to the price at which gas could profitably be sold in Peoria. I am speaking with reference to the time the preliminary arrangements for the organization were in progress.

Objected to as incompetent and immaterial.

A. I don't remember of any such conversation now. In fact, I had but very little conversation with any of the gentlemen; I only took a very small interest in the company and I had but little knowledge of the particulars in its formation.

43. What, if any, information did any of those gentlemen give you with reference to the price at which they proposed to furnish gas as compared with the price then charged by the old company?

Objected to as incompetent and immaterial.

1228 A. I don't think any such conversation was had.

44. What if any statements did any of them make to you with reference to the new company's entering the Peoria field for competitive purposes and so remain?

(Objected to same grounds.)

The MASTER: I don't think this line of inquiry material at all

How could this affect the action of the city council in any way, shape or form. This witness was not a member of the council. It does not occur to me it is material under the issues in this case in any sense.

Mr. TICHENOR: I would like to have it answered.

The MASTER: He may answer the question subject to the objection.

A. I think the only statement made in the matter was at the time just previous to my signing the subscription list when I stated to some of them if this company was being formed for the purpose of selling out its franchise I did not want to be a subscriber but if it was formed for the purpose of legitimate business I would be glad to become a subscriber. I was given to understand it was for that purpose and that was about all the conversation I had in relation to the matter.

45. Were you present at the first meeting of the subscribers to the capital stock convened for the purpose of completing the necessary preliminaries for application for a charter?

A. I think I was.

46. Have you ever been a director in complainant company?

A. No sir.

47. What if anything did you have to do with making up the list of directors elected at that time?

Ans. None.

48. When did you for the first time know who the directors were to be—was it before the meeting or at the time of the meeting?

A. It was at the meeting when they were named and voted
1229 on; that was the first knowledge I had of it.

49. Those gentlemen then named and elected as directors were all Peoria people, were they not?

Objected to as incompetent and immaterial.

A. Yes sir.

50. State whether or not you took the stock for which you originally subscribed?

Ans. Yes sir.

51. State how many assessments were made upon that stock and how many you paid?

(Objected to same grounds.)

A. My recollection is there was one assessment made of 20% which I paid.

52. Do you remember when, with reference to the granting of the franchise, that assessment was made and paid?

Objected to same grounds.

A. Some time thereafter.

53. Do you know what, if any, expenses had been incurred by

the company in the way of carrying out its franchise in the city of Peoria prior to the time of the levying of that assessment?

A. I do not; I was not a director and was not familiar with its management.

54. Did you or not see any statement of receipts and disbursements on account of any expenditures prior to the time of that levy?

Ans. I did not.

55. Did you know from time to time what work was being done pursuant to the carrying out of the license granted by the city of Peoria?

A. Not definitely, only casually; I took no active part in the matter whatever.

56. Who was in charge during that early period?

A. I think Mr. Little.

57. What, if anything, had Theodore J. Miller to do with
1230 it, within your knowledge?

A. I think Mr. Little was the active manager but Theodore J. Miller took quite a part in it also.

58. Do you know what, if anything, Sumner R. Clarke had to do with it?

A. I think he also took some interest in the matter but how much the various gentlemen took I do not know definitely.

59. What if any representations were made to you by any of the parties interested at the time you made your subscription, or before, with respect to the amount which you would be required to pay upon the stock for which you subscribed?

Objected to as incompetent and immaterial.

A. None.

60. Do you know who furnished the funds for the work prior to the time that 20 % assessment was collected?

Objected to as incompetent and immaterial.

A. Positively I do not, indirectly I was informed it was furnished through Mr. Walsh or the bank he was interested in in Chicago.

Complainant objects to the answer as hearsay and not responsive and moves the court to exclude it.

The MASTER: I don't think the answer responsive. The question calls for your personal knowledge, Mr. Luthy.

The WITNESS: I stated in the beginning that it was only from hearsay I got this.

(Mr. TICHENOR:)

61. Did that information come to you through others associated with you in the new enterprise?

Objected to as immaterial.

A. My recollection now is I got this information through our bank.

62. What if anything did you have to do with auditing
1231 accounts pertaining to the construction of the complainant company's plant in Peoria?

(Objected to as immaterial.)

A. I had nothing to do with it.

63. Did you ever see any such statement?

Ans. No.

64. Had you any knowledge from time to time as the work progressed as to what was being done or what prices were being paid for material and labor?

Ans. No.

65. During the time the company was in process of organization, or before, what, if any, knowledge had you as to the extent of the outlay necessary for the installing of a plant of the character which it was proposed to build in Peoria?

Objected to as immaterial.

A. I thought the outlay would require quite a large amount of money.

66. Did you have any figures upon the subject?

Objected to as immaterial.

A. No sir, but I had knowledge of the value of the stock in the other gas company and had some idea of its assets and the requirements of such a plant, but nothing definitely or minutely.

67. Had that knowledge been acquired through anyone interested in the old company, or was it from your own personal observation and conclusion?

A. I would say largely from my own personal observations and conclusions and at one or more times I was considering the purchase of some stock in the old company and possibly got some idea in that way; that might have been a year or two previous to this time, but being connected with a bank I naturally would have more or less knowledge of the various industries in the city.

68. Had the old company ever carried an account at your bank?

A. No sir.

69. Did you not at the time inquire as to the various build-
1232 ings and the various apparatus necessary to constitute a complete gas plant?

A. I think I will have to answer that I did not; I had a general idea of the old gas plant from its appearance as you would get it from the railroad and river passing it, which I have done very many times, but definitely I did not.

70. Did you know about the quantity of gas consumed in Peoria at that time?

Ans. No sir.

71. Had you any knowledge whatever upon that question?

A. Nothing definite.

72. Had you previously made any inquiry or investigation bearing upon the cost of construction, including material and labor, the expense of operation, the life of the various mechanical devices and appliances used in the gas industry ?

A. No sir, my general knowledge of the condition of values was that iron was quite low at the time, lower than it had been for years past, and that it was rather a favorable time for constructing a plant on account of material being low in value.

73. What was the price of labor at that time as compared with what it had been in recent years, if you know ?

A. I think it was about as low.

74. And those were all matters which entered into your final judgment ?

Ans. In a general way only ; I took no special interest in that.

75. State when, if at all, you first knew of the expenditures for construction in installing the Peoria plant of complainant company ?

(Objected to as immaterial.)

The MASTER : I don't see the materiality of it but he may answer subject to the objection.

A. I did not at first know that and don't know until this time ; I am not informed on that.

1233 76. You have never seen what purported to be a statement or summary of those expenditures ?

Ans. No sir.

77. What, if anything, have you had to do, by way of advice or otherwise, with the management and operation of the business of your company ?

(Objected to as immaterial.)

The MASTER : I do not see the materiality of it.

A. None whatever.

78. How many stockholder meetings of complainant company have you attended since its organization ?

A. I think I attended one other than the first one.

79. Are you able to state about when that was ?

A. I think it was about 1½ or 2 years ago.

80. What business at that time came before the stockholders for consideration and what was considered by them ?

Objected to as incompetent and immaterial.

The MASTER : I do not see the materiality of it.

Mr. TICHENOR : I would like to have it answered.

The MASTER : The witness may answer subject to the objection.

A. The particular business, as I remember it, was the consideration of increasing the capital stock.

81. State whether or not any reason was then given for such action on the part of the stock holders and by whom ?

Objected to as incompetent and immaterial.

The MASTER: How does the reason become material. Suppose they did not do it?

Mr. TICHENOR: I would prefer not to state my reasons at the present time for this line of examination.

The MASTER: All right, he may answer subject to the objection.

A. I think Mr. Little said that it was deemed best to increase the capital stock of the company; it was not gone into specifically.

1234 82. Did you from his explanation at that time, or from the statements made by others in that meeting, know why the capital stock was to be increased?

Objected to as incompetent, immaterial and assuming it was increased.

A. I think not.

83. State whether or not the question was voted on at that meeting?

(Objected to as incompetent and immaterial.)

A. The question was voted on, as I remember it; I am not certain whether the question was voted on to increase it or whether the question was voted on to give the directors the right to increase it, but my recollection is one or the other was voted on.

84. Who of the stockholders were present at that meeting, if you remember?

Objected to as incompetent and immaterial.

The MASTER: I don't think it a competent way to prove that fact. You are trying to prove what the record shows now.

Mr. TICHENOR: If council for complainant will produce the record, I will waive the question.

The MASTER: I presume you can get the record if you want it if it is material.

A. I took but very little interest in the matter; I was only there a very short time and was only a small stockholder. My recollection is now Mr. Little was there and I think Mr. Clarke and Mr. Miller and there may have been some others there; I am not certain. I took but very little interest in the matter, as I was not prominently connected with the company.

85. The capital of complainant company was originally $500,000. was it not?

Ans. Yes, I believe so.

86. And it was increased to two millions, was it not?

Objected to as immaterial.

1235 A. I don't remember now whether it was one million or two million.

87. You are unable at this time to state the reasons given, if any, of the necessity for increasing the stock, are you?

A. I had nothing to do with the increase of it; it was decided at the meeting to increase it, but I was not in control and could not give the reasons.

88. Were any reasons given to you?

A. I don't think there were at that meeting.

89. Did you ever know any reasons for doing so?

Objected to as incompetent and immaterial as to any of the issues in this case.

The MASTER: The master cannot see the materiality of it now.

A. The increase is a matter of record and whatever those records show are the facts.

90. Did you know at the time what was to be done with the stock represented by that increase?

Objected to as immaterial.

A. No sir.

91. Did you know afterwards?

(Objected to as immaterial.)

A. I don't know personally what became of the stock.

92. Do you know personally what became of any of it?

Objected to as immaterial.

A. I got some of the increased stock.

93. What did you pay for it?

(Objected to same grounds.)

A. I don't think it cost me anything.

94. How much did you get of the additional stock?

Objected to as immaterial and incompetent.

A. I got a trifle more than my original subscription, if I remember right.

95. Do you personally know what became of any of the
1236 rest of the increased stock?

A. No, personally I don't know, but I presume the others shared as I did.

96. When did you know that stock was to be given to you?

Objected to as incompetent and immaterial.

A. I don't think I knew until I got it.

97. Who gave it to you?

(Objected to same grounds.)

A. One of the representatives of the company; I am not certain whether it was Mr. Little or not.

98. What explanation was given in connection with the delivery of the stock to you, if any?

(Objected to same grounds.)

The MASTER: The question assumes some explanation was given. I think you should ask for what was said in connection with it without assuming something was said?

99. What, if anything, was said to you with reference to the stock at the time it was delivered?

Objected to as incompetent, immaterial and irrelevant.

A. I don't remember now what was said about it.

100. State whether or not in any of the proceedings representing the increase of capital stock, or up to the time this additional stock was delivered to you, you had received any information or advice from any of the people interested in your company to the effect that such increase, or any part of it, was to be distributed among the different stockholders?

(Objected to same grounds.)

A. I don't think I had any such information.

101. And you have no recollection that any explanation or statements were made to you at the time of its delivery?

Objected to same grounds.

A. I don't remember now what explanation was made; I got the stock and naturally it was quite acceptable.

102. What, if any, inquiries did you make with reference
1237 to why it was delivered to you?

Objected to as incompetent and immaterial.

A. I don't remember of making any inquiries.

103. What assessment has ever been made on that increase, if any?

Objected to same grounds.

A. I don't know, I presume none, I never paid any.

104. Have you ever known from anything said by any of the officers or stockholders of your company why that additional stock was delivered to you?

(Objected to same grounds.)

A. I think not.

105. And you don't know at this time why it was given to you, do you?

(Objected to same grounds.)

A. I may have my own ideas but whether they are correct or not I could not say.

106. Are those ideas based upon any statements that have been made by any of the parties interested?

A. No, nor I have never seen a statement of the assets or liabilities of the company.

107. Have you ever had any conversation with any of the officers or stock holders bearing upon that additional issue and why it was done?

(Objected to same grounds.)

A. I don't remember of any now.

108. What if any document pertaining to the management of the company, or to its stock, have you signed, or authorized to be signed for you, since its incorporation exclusive or the original subscription?

(Objected to as immaterial.)

The MASTER: I don't see the materiality of it.

Mr. TICHENOR: I think the master will before we get through.

The MASTER: The witness may answer subject to the objection.

A. I think I have given a proxy or a voting agreement for
1238 my stock. I don't recall of anything else.

109. Do you remember signing any document whatever with reference to the stock of this corporation, or any part of it, during the time you have been a stockholder, either before or after the increase?

(Objected to as incompetent and immaterial.)

A. A proxy or voting agreement; that is all I remember now.

110. Do you know for what purpose that proxy was wanted at that time?

(Objected to as immaterial and incompetent.)

A. I think I know; I think it was to keep the majority of the stock within the company as originally formed so it could not be scattered and possibly got hold of by outsiders. It was one way, I presume, of keeping the company from being bought up possibly. My small amount of stock, of course, would not cut much of a figure, but there might have been others in the same fix. I didn't know exactly the amount of stock held by each.

111. Is it not true that a portion of the scheme contemplated at that time when your proxy was called for was the formation of a combination or trust in which the whole of that stock or a part of it was to participate?

Objected to as incompetent, immaterial and irrelevent.

The MASTER: I do not see the materiality of that but the witness may answer subject to the objection.

A. I think not, that was not the understanding I had.

112. You understood its full import, did you before you gave your proxy?

Objected to as incompetent, immaterial and an attempt to inquire

into the private affairs of the witness and of a company that has nothing to do with the investigation.

A. The purport, as I understood it was, as I have already explained, to keep the majority of the stock in the hands of the company so it could not be bought up; it was to keep the company intact.

1239 113. Who was to hold or control that stock so provided to be kept together?

Objected to as incompetent and immaterial, irrelevant, and an inquiry into the private affairs of the witness and the witness has a perfect right to refuse to answer if he desires.

The MASTER: The witness may answer subject to the objection.

A. Summer R. Clarke and I will not be positive who the other gentleman was; Summer R. Clarke was the one I relied on very strongly.

114. They were named as trustees?

A. My recollection is there were two of them—Interrupted.

Mr. IRWIN: Complainant objects to this evidence as incompetent because counsel for defendant has no right to draw out from this witness the contents of an agreement if there is one as the agreemtn- would be the best evidence.

The MASTER: The question was simply whether or not they were to act as trustees; the agreement, of course, would be the best evidence of what their powers were.

115. Have you the original of that agreement in your custody or control?

(Objected to as incompetent and immaterial.)

A. I have not got it with me; I don't know whether I have it among my papers at my place of business or elsewhere or not. I may have such a paper but I don't know where it is now.

116. Will you make an examination and if you find it, produce it in court upon further request?

Ans. I will do so.

117. State whether or not that agreement still remains in full force and effect?

Objected to as incompetent, immaterial, irrelevant and not the best evidence.

A. I think it is in effect yet.

1240 118. About what time was it executed, if you remember?

Objected to same grounds.

A. I don't remember the exact time now.

119. Are you able to state approximately when it was signed?

The MASTER: I don't think that evidence competent now. I think you had better wait and see whether you can get the original. I

think that would be the best way to do and put your proof in so there can be no question as to its competency.

The WITNESS: I wish to state here that I have never given this matter but very little thought and have not paid much attention to it; my holding is not large enough.

120. What dividends have been paid to you on the stock issued to you on your original subscription and what dividends on your holdings of the increase, if any?

Objected to as incompetent and immaterial.

A. I have had no dividends on the increase; I don't know that I have ever had a dividend on the original stock; I don't believe it would be called a dividend.

121. How much money has been paid back to you, if any, by the company or any other person of the original amount which you paid on your first stock subscription?

Mr. IRWIN: Complainant objects to the question as incompetent, immaterial, irrelevant and an attempt to inquire into the private affairs of the witness, and I believe he has a right to refuse to answer the question if he sees fit so to do.

The MASTER: The witness may answer subject to the objection.

The WITNESS: I think that is a personal matter and unless the court insists I will not answer.

Mr. IRWIN: I think the witness is entitled to advise with his counsel as to whether he is compelled to answer that question or any question of the same import.

1241 The MASTER: I think that is a very material inquiry in this case, it cannot be otherwise.

Mr. IRWIN: It could not affect the issues in this case one way or the other if he got it all back or ten times as much back. It has nothing to do with the price of gas or with the cost of the plant and is simply an attempt to inquire into the private affairs of the witness, and it is unfair to the witness to attempt to do it. If I were counsel for the witness I would tell him very quick what to do and take my chances with the court.

The MASTER: Suppose it should turn out in this case that the money paid back to these stock subscribers was equal to a dividend of 25 or 30 per cent. on their stock, would you say then it was not a material inquiry?

Mr. IRWIN: Yes sir, I should say it was not unless the purpose for which it might have been paid was shown. The only point at issue here is what is the cost or what can gas be produced for and what is the amount of capital invested.

The MASTER: The master takes this view of it, that the dividends paid to stockholders is one criterion upon which to judge of the reasonableness of this ordinance. If it appears the stockholders have received money back that was not paid to them by reason of the

earnings of the company, that is a matter for you to show on cross examination. I think this is a material inquiry and the witness may answer the question.

A. The amount of my payment was 20 per cent. and interest on the same.

122. For what time was the interest paid?

Objected to as incompetent and immaterial.

A. I think it was for the bulk of the time that the money had been paid. If I remember correctly, I figured the rate of interest at the time and found it was not quite equal to the time, but it
1242 nearly covered the time the money had been out but I forget now whether the interest is a 5 per cent. or 6 per cent. per annum rate.

123. How long before that money was paid to you did you know that it was to be paid?

(Objected to as immaterial.)

A. I didn't know before that it was to be done.

124. Who paid it to you?

(Objected to as immaterial.)

A. It was a representative of the company, I don't remember whether it was Mr. Little or not but rather think it was.

125. Do you remember at this time in what form it was paid?

Objected to as incompetent and immaterial.

A. I think it was in the form of a check.

126. Whose check was it?

(Objected to same grounds.)

A. I could not say, I don't remember now.

127. On what bank was it drawn?

(Objected to same grounds.)

A. I don't remember now; the check was paid though; I never heard from it afterwards.

128. Was this money to which you have referred the only money paid to you on your stock or otherwise by the company?

Objected to as incompetent and immaterial.

A. Yes sir.

129. What verbal statements, if any, were made to you by the person that paid you that money at the time it was done?

Objected to as incompetent, immaterial and already answered.

A. I don't remember definitely now, there might have been a statement like this: "Here's a check reimbursing you for the amount paid"——

Mr. IRWIN: I object to the witness stating something that might have been said; if he don't remember what was said, he should say so.

The WITNESS: I don't remember definitely what verbal
1243 statements were made.

130. Were any statements of account, or matter in writing, presented to you at that time in connection with the check?

Objected to as incompetent and immaterial.

A. I don't remember now but it seems to me there was a plain receipt for the amount of money, but I am not certain as to that; it might have been that the check was to my order, or I might have signed a plain receipt for so much money; I am not certain.

131. What, if any, inquiries did you then make with reference to it?

(Objected to same grounds.)

The MASTER: I don't think it material.

A. I don't remember of any now.

132. I think you testified that you had no knowledge or notice that such money was to be paid to you until it was actually done?

Ans. That is my recollection now.

133. Have you since that time ever known why it was done from anyone connected with the management of complainant company?

Objected to as incompetent and immaterial.

A. No sir; I don't think I have had any information from any one connected with the company; I have my own ideas about it.

134. If you have no knowledge upon the question I don't care to have you speculate?

A. I don't remember of any such knowledge; I have my own ideas about it, as I understand matters of that kind are not infrequent in organizations.

135. I stated a minute ago I did not care for your speculations but wanted your knowledge?

A. I don't remember of any personal conversation with any of the officers of the company in relation to it since that time.

136. Do you know of your own personal knowledge whether the other stockholders received funds from the company substan-
1244 tially in the same way as you did and as you have described?

Objected to same grounds as before.

A. No sir; I don't of my own personal knowledge.

137. If you are able to find the document to which you have referred I wish you would produce it in court at 10 o'clock to-morrow morning and if you are unable to find it notify me by telephone?

A. All right.

138. What, if anything, have you had to do by way of advice or otherwise, with fixing the price of gas which your company has charged since it began its service?

Ans. Nothing whatever.

139. Do you know who has fixed the prices?

A. Personally I don't know; I presume the management has.

140. Do you know of any changes that have been made in the directory since the incorporation of the company?

Objected to as immaterial.

A. I don't know what changes have been made.

141. Do you know who the directors are now?

Ans. No sir;

142. Do you remember in what manner the directors of your company are elected, or how vacancies are filled, if they occur during a term?

(Objected to as incompetent and immaterial.)

A. I don't remember now; I presume it is done according to the by-laws; personally I could not state.

143. Have you ever been present at any stockholders' meeting when directors were elected?

(Objected to same grounds.)

A. I have stated already I was at the first meeting.

144. I mean besides the first meeting?

Ans. I don't remember of any now.

145. Are you able to state from recollection whether or not you have ever received any notice of a stockholders' meeting except as to the one at the time you perfected your preliminary arrangements for incorporation?

(Objected to as immaterial.)

A. I think I have received such notices and think I have
1245 attended one meeting; that is all I remember of at present.

146. Do you know whether O. J. Bailey is still a director of complainant company?

Ans. I don't know.

147. Do you know whether Philo B. Miles is?

Ans. I do not, no.

148. At this meeting of stockholders which you attended were any directors elected?

(Objected to as immaterial, not best evidence.)

A. This first meeting?

149. No, I mean the subsequent meeting?

A. I think not at that one; it was a special meeting as I remember it.

150. Do you know Lyman A. Walton of Chicago?

A. I once upon a time met a gentleman in Chicago by that name but I could not say positively now—I think I met the gentleman in Chicago.

151. Do you know whether or not he has any interest in complainant company at the present time?

Ans. I don't know, sir.

152. You don't know whether he is a stockholder, director or officer?

Ans. No I do not.

153. Do you know whether John R. Walsh has any interest in your company?

A. From my own personal knowledge I do not; indirectly I was led to understand he was quite an interested party.

154. When did your acquaintance with Mr. Little begin?

A. I think about the time this company was formed.

155. Did you know at that time, from your connection with the complainant company, what position he was to occupy in said company?

A. I would not know so through any knowledge I had gathered from the meetings, but at other times, from parties connected with it, I was given to understand he would take charge of affairs here as he was an experienced man in the manufacture of gas.

1246 Complainant objects to the foregoing answer as hearsay and not responsive and move- the court to exclude it.

156. Your meeting with him was subsequent to the making up of the subscription list was it?

Objected to as incompetent and immaterial.

A. I don't remember whether he was present at the time of the signing of the stock list or not but I rather think he was; I am not positive now, he might and might not have been.

157. Did you know prior to the time you subscribed how extensively it was proposed to build with reference to the demand for gas in the Peoria district?

(Objected to as immaterial.)

A. I don't know that I knew definitely; I understood they were to build quite extensively; how I gathered that information I could not state just now, but it was a business transaction and they were to prosecute the business; the company was formed for the purpose of doing business and doing it extensively.

158. Did you know at that time whether or not it was the intention of the company to install a plant of sufficient capacity to supply the entire demand in the Peoria district?

Objected to as immaterial.

A. From my own personal knowledge I did not, but going into

this business I understood they would install a plant and furnish gas—do a legitimate business.

159. But you don't know how large a plant they proposed to build?

A. I was not consulted on that; my interest was so small I naturally would not be.

160. Do you know where the funds of the complainant company has been kept since its organization?

Objected to as immaterial.

A. They keep an account in the Merchants national bank
1247 and I think also have one in Chicago.

161. Where are the bills of the company paid and where have they been since its organization?

Objected to as incompetent and immaterial.

A. I don't know.

162. Do you know whether or not the company checks against its account in your bank for those purposes?

Objected to same grounds.

A. Really I don't know; my supposition would be that some of the bills are paid in that way but I do not pay the checks personally or attend to that part of the business.

163. Do you know the magnitude of the account carried in your bank during the time the company was engaged in the construction of its plant?

(Objected to same grounds.)

A. I do not.

164. Do you know of any other account carried by complainant company except the two to which you have referred?

Objected to as incompetent and immaterial.

A. I do not; those are the only two I know about but the company may have others; I have nothing to do with the management.

165. Is it not true that you are reasonably familiar with the baking business in Peoria?

(Objected to as immaterial.)

A. Reasonbly so, yes sir.

166. I will ask you if it is not true that some five or six months ago the complainant company opened an account in the Commercial national bank of this city?

Objected to as incompetent and immaterial.

A. If they have such an account I don't know it; I don't know whether they have or not.

167. Do you know where the funds realized from the assessment of twenty per cent., to which you have referred, was deposited?

1248 Objected to as incompetent and immaterial.

A. I do not.

168. In what manner did you pay your assessment, by check or in currency?

Ans. By check or draft, I am not certain which.

169. Do you remember who made the collection?

Objected to as immaterial.

MASTER: I do not see the materiality of this testimony but the witness may answer subject to the objection.

A. I think the notice was sent out to pay the treasurer and if I remember correctly I remitted to him in Chicago.

170. Do you remember who the treasurer was?

A. I don't remember his name now, but his address was given as Chicago; I might possibly find a copy of the remittance which would give it.

171. You might look for that paper also when looking for the other papers and telephone me with regard to that. What if anything did you have to do with procuring a license or a franchise from the city to occupy the streets and alleys for the purpose of constructing complainant's plant?

A. I had nothing to do with it.

172. During the time elapsing since the organization of complainant's company what, if any, knowledge have you had from time to time of the quantity of gas it has been furnishing?

A. I am not informed on that subject.

173. Do you know what proportion of the entire gas consumption in the Peoria district complainant company is furnishing at this time?

Ans. I do not.

174. Do you know what territory complainant company occupied at the time it began to furnish gas as compared with the territory occupied at that time by the Peoria Gas Light and Coke Co.?

A. I do not.

1249 175. Are you familiar with the territory which it occupies and to which it is now furhishing gas?

Ans. I am not.

176. Have you had any knowledge of either of those subjects since complainant company began to furnish gas here?

Ans. No.

177. Have you at any time had any conversation with Mr. Little with regard to the prices or rates charged, or to be charged, in Peoria for gas?

A. I have a number of times ridden up on the street cars with Mr. Little and when we got off at North street and walked up a block together the subject might have been mentioned, but there was nothing said of any definite character, or nothing that would affect the action of the company or its prices. I was never a director

in the company and never took but little interest in it for I had not the time to spare.

178. Did you ever know to whom that subject was entrusted?

A. No sir, but presume of course it was in the hands of the management of the company.

179. Look at Exhibit "19" in evidence in this case and state whether you ever saw it before?

A. I think I saw this or a duplicate of it.

180. State whether or not that paper bears your genuine signature?

A. No sir; but my name is here; I asked Mr. Littlewood to sign my name for me and it was signed with my authority.

181. Had you seen and examined the paper before you authorized him to sign it in your behalf?

A. I saw as I remember either this or a duplicate of it; I read it over hurriedly and I would not be apt to remember it very long, not being in that business.

182. Did you know at that time that an ordinance pertaining to the obtaining of a franchise or license by complainant company in Peoria was then pending before the city council or that it was about to be presented?

1250

A. I knew of the time it was to be presented.

183. Had it been presented at the time you authorized the signing of that paper?

A. I don't remember exactly; this matter took its regular course; I don't remember any irregularity about it.

184. State whether or not at the time you authorized Mr. Littlewood to sign that paper in your behalf you believed the statements and representations contained in Exhibit "19" to be true and if the complainant company were granted a franchise or license to occupy the streets and alleys of the city of Peoria for the purpose of constructing a gas plant in Peoria, as it was then seeking by ordinance or as it was about to ask, would be carried out in good faith?

A. I had no reason to doubt but what they were acting in good faith.

185. Did you believe at that time that the persons who were subscribers to the corporation were able financially to carry out the statements and representations embodied in Exhibit "19" in case a license should be granted and that it would be done?

Objected to as incompetent and immaterial.

A. I had no reason to doubt but what the company would be on a good financial basis and that they would prosecute the business of furnishing gas vigorously and this would come within their province and they were going into the field to furnish gas.

186. That hardly answers my question.

A. On the other hand, these people do not state that they personally and individually, jointly and severally, guarantee that the

entire amount of the stock required will be furnished by
1251 themselves. This is the usual business procedure in such matters, is it not?

187. (Int. 185 repeated to witness.)

A. I might state that about this time I knew the amount of stock that I was allowed to subscribe for and I expected to furnish sufficient—Interrupted.

The MASTER: I don't think you understand the question.

(Int. 185 repeated to witness.)

Ans. Yes sir.

Cross interrogatories by Mr. IRWIN:

1. You have testified about receiving some money back from the company—that money you received from the company was not considered as a dividend upon your stock was it?

Objected to as calling for a conclusion and incompetent, especially as the witness has already testified he has no knowledge whatever as to why it was paid to him.

The MASTER: I don't think the question proper in form. Let the witness state what he knows about it if he wants to and on what account it was received.

Mr. IRWIN: I am getting at it in my own way on cross examination. I don't think, considering the leading questions that have been permitted to be asked on direct examination, that I ought to be barred on cross examination from asking leading questions.

The MASTER: Not at all, but the question is objectionable in other respects; it assumes to answer in itself the question put. I don't think you ought to put a question and put the answer at the same time in the mouth of the witness.

Mr. IRWIN: I am not doing that; it is for him to answer whether it was considered a dividend or not.

The MASTER: I don't think the question proper but he may answer it subject to the objection.

A. I did not consider it a dividend and I think in my previous testimony I so stated.

252 2. Do you know whether it was paid out of the earnings of the company or not?

(Objected to as immaterial and incompetent.)

A. I don't know. (I presume it was paid out of the sale of bonds.)

Defendant moves the court to exclude that portion of the foregoing answer enclosed in brackets as not responsive and incompetent.

The WITNESS: I am sorry I don't know more about this matter but really I know little about it; in a business way you get ideas

and they are most likely correct but you cannot state definitely where you get the information and it would not be at any meeting.

3. Have you ever received any stock dividends whatever upon your stock from the earnings of the company to your knowledge?

Objected to as calling for a conclusion.

A. No dividends from the earnings of the company that I know of.

4. Do you know of any stockholder ever having received a dividend from the earnings of the company upon his stock?

Objected to same grounds.

A. I do not.

Re-direct interrogatories by Mr. TICHENOR:

1. What knowledge have you of the earnings of the company from the time it began to operate?

A. I don't know what the earnings of the company have been.

2. Have you ever seen any statement pertaining to its earnings?

Ans. No.

3. Have you at this time any knowledge whatever as to what it has earned?

Ans. I have not.

1253 JACOB HECHT, called on behalf of defendant, being first duly sworn deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. State your name and place of residence?

A. Jacob Hecht; No. 2109 South Adams street, Peoria, Ill.

2. You have been a resident of Peoria for a great many years?

A. Yes.

3. What is your business?

Ans. Meat business.

4. State whether or not you have at any time been a member of the city council of the city of Peoria?

Ans. Yes.

5. Were you a member at the time of the passage of the ordinance granting to the company now know- as the Peoria Gas & Electric Co., a license or franchise to use the streets and alleys of the city of Peoria for laying pipe, etc., in connection with its gas plant?

Ans. Yes sir.

6. Do you remember the fact that such an ordinance was presented to the council and passed?

Ans. Yes.

7. Do you remember how long the ordinance was pending?
A. I don't know; it must have been three or four weeks; I remember it was passed the night of election.
8. How many of the council meetings did you attend during the time that ordinance was pending?
A. I attended every meeting.
9. Were you present at the time it was first presented to the council?
Ans. Yes.
10. During the time this ordinance was pending state whether or not you had any conversation with any of the gentlemen interested in the new company, whose names appear on Exhibit "19" now shown you, with respect to that ordinance?

Objected to as incompetent and immaterial.

A. I talked with Theodore J. Miller; he was the only one
1254 so far as I can remember I talked with upon that subject except Bob Clark I remember talking with on the council meeting night when it was passed.
11. Do you remember having seen this paper marked Exhibit "19" during the time that ordinance was pending?
A. Yes, I saw this paper or one like it.
12. Are you able to state at this time how long it was before the passage of that ordinance that you talked with Mr. Miller about it?
A. Yes, maybe a week or two before he said there would be a petition before the council and an ordinance.
13. Was that before the ordinance had been presented to the council in the first instance?
A. Yes and when it was before the council also.
14. So you had more than one talk with him with regard to it?
A. Yes.
15. What was the conversation you had with him on the first occasion to which you have referred?

Objected to as incompetent and immaterial.

A. Well, he said that there was a new company organized of home capital and home people and the result would be cheaper gas and that I could work for it, that it would give work for a good many people and naturally would reduce the price of gas.
16. What was your second conversation with him upon the same subject?

(Objected to same grounds.)

A. He wanted the ordinance passed so they could go ahead and do the work before cold weather commenced; it was on election night and he came in the council and wanted it passed that night so they could go ahead and commence work.
17. Was that the night it was actually passed?

A. Yes and that was the night when Mr. Lynch was elected
1255 mayor.

18. What, if anything, was said that night with reference to the reduction in the price of gas in case there was competition?

Objected to same grounds.

A. Well, he said if there was competition it would naturally lower the price of gas which it had already done at that time. I knew at that time the old company had reduced the price of gas and the result would be that the people would get cheaper gas.

19. State what, if any, influence the representations made to you with regard to it being Peoria people and Peoria capital interested in the new enterprise, and also that there would be a reduction in price from competition, had with you in making up your judgment as to what course you would take with reference to the ordinance?

(Objected to same grounds.)

A. It had a great deal to do with it. I made up my mind I would vote for it on account it would give cheaper gas to the people.

20. Did you know at that time that anybody outside of Peoria had any interest in the new company that was then seeking to get a franchise from the city?

A. Not that I know of; they were all home people, home capital so far as I knew.

21. You voted in favor of the ordinance upon its passage, did you?

Ans. Yes sir.

22. Did you believe at that time that the statements and representations made in this paper "Exhibit 19" were true?

Objected to as incompetent and immaterial.

A. I thought they were; I believed the statement.

Cross interrogatories by Mr. ABBOTT:

1. In your conversation with Mr. Miller was not the fact brought out that the erection of this new industry would give em-
1256 ployment to a number of idle people in the city in the construction of the plant and laying of the mains and services?

A. Yes sir.

2. Is it not a fact that that was one of the considerations in your mind which induced you to vote for the ordinance?

A. No sir.

3. Didn't it have any effect in influencing you in making up your mind, that a large amount of money would be distributed to the laboring men of the city?

A. That did not alone influence me.

4. I did not ask you if it was that alone, but did not that have some effect in helping you to make up your mind about it?

A. Well, it might have had something to do with it.

5. Did it not as a matter of fact have something to do with it?

A. Am I allowed to express myself in my own way?

6. Yes.

Ans. If I had known at that time what I know now I never would have voted for it.

Answer objected to by complainant as not responsive and excluded by the master.

7. (Int. 4 repeated to witness.)

A. It might have had some.

8. In the talk between you and Mr. Miller he stated substantially did he not, that competition would probably reduce the price of gas?

A. That it naturally would, that it had already reduced the price at that time and they would furnish cheap gas to the city of Peoria. I voted for a franchise once before and they never came here from Chicago.

9. That cheapening of gas by the old company had been made after the application for this ordinance before the city council?

A. Yes.

1257 10. These conversations, as I understand you, all took place before the passage of the ordinance by the city council?

A. Yes.

11. Was it not also a subject brought out in those conversations that the new company, if formed, would not sell out its franchise to the old company?

A. Yes, that they would not sell out to the old company.

12. Is it not a fact that it was insisted that they should not sell out to the old company but should go ahead in good faith and erect a plant of their own?

Ans. Yes sir.

13. Did not the expectation that they would erect a plant of their own and not merely procure the franchise and sell it out have some influence with you in making up your mind about your vote?

A. That they would not consolidate together.

14. They did go ahead, erect a plant and lay mains and service pipes?

Ans. After the passage of the ordinance, yes.

15. The conversations you had with Mr. Miller then, as I understand you, were substantially the same as the representations in the paper marked "Exhibit 19"?

Ans. About the same.

Adjourned by agreement until Tuesday, April 29, 1902, at 10 a. m.

United States circuit court room, Government building.

PEORIA, ILLINOIS,
TUESDAY, *April* 29, 1902—10 o'clock a. m

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. Irwin and Mr. E. C. Ritcher appearing for complainant. Mr. Hen Mansfield and Mr. F. H. Tichenor appearing for defendant.

1258 THOMAS N. GORMAN, called on behalf of defendants, bei first duly sworn, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. State your name and place of residence?

A. Thomas N. Gorman; 1020 S. Adams street, Peoria, Ill.

2. You have been a resident of Peoria for a number of yea have you not?

Ans. About 35 years.

3. What is your business?

A. I am an employé of the Peoria Gas Light & Coke Co.

4. How long have you been employed by that company?

A. About 11 years.

5. In what line of business were you engaged prior to that time

A. I worked for a number of years in a grocery store with m father; prior to my being employed by the gas company, I wa chief of police of this city for two years and also worked in the r corder's office for one year.

6. In what different capacities have you been employed by th Peoria Gas Light & Coke Co.?

A. My position at all times has been a clerical one until probabl the last 2 years.

7. In the performance of the duties devolving upon you, did yo have anything to do with the accounts of the company?

Ans. No.

8. Did you have to do with the collection of gas bills and wor of that character?

A. Yes sir, my work principally at all times was that which migh be termed cashier, waiting on the people at the window—entirely in the office.

9. What has been your position during the past two years?

A. Well, it has been on the line of what might be termed resident manager for the company.

1259 10. During the time you have been connected with the Peoria Gas Light & Coke Co., have you become familiar with its plant and the territory in which it has been operated?

A. No sir; I have a knowledge of the territory in which we oper ate but so far as any knowledge is concerned with reference to its plant I know nothing of it.

11. You are not skilled then in the manufacture and distribution of gas?

Ans. No, I don't know a thing about it.

12. As resident manager for this company, what has been your duties and what have you done?

A. As resident manager, my duty consists of giving orders in and about the office to the foreman in charge of the shop relative to the work to be done, such as setting meters, taking out meters, putting in service pipes; matters of that kind is all I have any authority in.

13. Can you state more definitely than you have already done the date when your service as such resident manager began?

A. I could only date it from the time the change in ownership of the company took place and that I cannot call to memory now.

14. Have you anything in your office which will refresh your recollection upon that question and from which you can testify with certainty?

Ans. Yes sir.

15. I wish you would inform yourself and be prepared to answer that question definitely at a later time.

A. All right sir.

16. Since the time you have been resident manager, what if anything have you had to do with the plant itself—I mean the manufacturing plant and distributing plant as a whole?

A. Nothing at all; there is another gentleman in charge of that.

17. As such resident manager from time to time, has the
1260 work, its character, etc., either directly or indirectly passed under your observation?

A. Only that particular part of the work I have had connection with which I referred to a few minutes ago.

18. Who during that time has had charge of the plant itself?—I am speaking now of the manufacturing plant and the pipe system as well, taken as a whole?

A. During that time there was a man named Frank Lane who had charge of the manufacturing plant and later there was a man named Eustis in charge of the manufacturing plant, and during all the time, so far as the laying of mains, services and the distribution of gas, the man in charge of that particular department has been Dan Gorman.

19. And he still occupies that place, does he not?

A. Well that and other duties; he is still employed by the company.

20. And that is one of his duties at the present time?

A. That is one of his duties.

21. For how long a period of time did Mr. Lane occupy the position to which you have referred?

Objected to as immaterial.

A. I could not say; I have an idea it was probably 6 months or more of the two years I have referred to.

22. Will the records or any other material in your office show when he severed his connection with the company or discontinued that service?

A. The records will probably show that, but I have not charge of them or anything to do with them.

23. Who has charge of those records?

Ans. Mr. Bickwell.

24. What position does Mr. Bickwell occupy with your company?

1261 A. He is the book-keeper—the gentleman that looks after the finances of the company.

24. What is his official title, if he has any?

A. I do not know of any title other than that of book-keeper.

25. How long has he been occupying that position?

A. I think the greater part of the two years I have referred to, or to be more definite, he came here shortly after the change and has occupied that position ever since as book-keeper. When I speak of the change, I mean the change of ownership.

26. Has he any other duties in connection with your company except as book-keeper?

A. I said he was book-keeper and also looked after the finances of the company?

27. He handles the money for the concern, does he?

Ans. Yes.

28. His duties are entirely confined to the office?

Ans. Yes.

29. Who did you say took Mr. Lane's place as superintendent of the plant and distributing system?

A. Mr. Eustis succeeded Mr. Lane in charge of the plant and I said Dan Gorman was the man who had supervision of the mains and service pipe that were laid.

30. How long has Dan Gorman been connected with your company?

A. Oh, he was with the company, I believe, before I was born: he was also with the water company for awhile, also with the city and then back with the gas company again. His last connection with the gas company, I think, dates back possibly 12 or 15 years.

31. Will you define as accurately as you can what Dan Gorman's duties with the gas company has been during the time you have been associated with the company?

(Objected to as incompetent, immaterial.)

A. His duties have consisted of what I have referred to, laying mains and also supervision of the laying of service pipe.

32. And he was a superintendent in that department, was he?

1262 A. He had charge of that department; of course his orders in regard to the work he done emanated from others in authority, other than himself; he had his orders from others and simply carried them out.

33. Who is this Mr. Eustis that succeeded Mr. Lane?

A. I don't know that I can tell you who he is; he is a man employed by the gas company and is in charge of the plant; I don't know as I can give any more information; he was a stranger to me when he came here.

34. Do you know about when he came here?

A. I could not tell exactly; the only way I can locate the time would be I think of the two years' time referred to that Mr. Lane remained with the company about six months and the balance of the time Mr. Eustis has been with the company.

35. Do you know whether or not Mr. Eustis is a man skilled in the gas industry?

Ans. I don't know a thing of it.

36. State whether or not in that capacity Mr. Eustis is subject to your authority and direction?

Ans. No sir.

37. To whom does he report, if to anyone?

Objected to as immaterial.

The MASTER: I do not see the materiality of it now, gentlemen, but it may become material. The witness may answer subject to the objection.

A. He reports to Mr. Bickwell.

38. What is Mr. Eustis' full name?

A. I must confess I am so well acquainted with him that I cannot tell you.

39. During the time he has been acting in the capacity mentioned for your company, has he had any other business in the city of Peoria?

Ans. I don't know.

40. How frequently have you seen him during the time he
1263 has been employed by your company?

A. Probably two or three times a week.

41. For what purpose?

(Objected to as immaterial and incompetent.)

A. I can see him going to the gas works when I am coming up from that end of town to my own work.

42. You have not actually transacted any business with him during that period of time?

Ans. No sir.

43. Does he ever come to your office for any purpose?

Objected to as immaterial.

The MASTER: It may become material; I do not see the materiality of it now but I presume it will be made material. The witness may answer subject to the objection.

A. I have seen him in the office.

44. Do you know what he was there for?

Objected to as immaterial.

A. No, I do not.

45. What portion of his time is spent with your company?

A. I don't know.

(The MASTER:)

46. Is Mr. Eustis in Peoria at the present time?

The WITNESS: I presume he is.

The MASTER: Mr. Tichenor, why do you not subpoenae Mr. Eustis and learn about him from himself. What is the use of wasting time with this witness about matters of which he knows so little?

Mr. TICHENOR: I supposed Mr. Gorman knew more than he appears to know about it.

(Mr. TICHENOR:)

47. State whether or not your plant at the present time is manufacturing and delivering gas?

Objected to as incompetent, immaterial, irrelevant, and has nothing to do with the issues in this case.

A. I could not tell you from my personal knowledge.

1264 48. Have you at any time, since you have been in the service of the Peoria Gas Light & Coke Co., known whether or not it was manufacturing and distributing gas?

Objected to same grounds as before.

A. Yes sir.

49. When and up to what time did you have such knowledge?

Objected to as incompetent, immaterial, and irrelevant.

The MASTER: This is only for the purpose of testing the knowledge of the witness on this matter and he may answer subject to the objection.

A. I have not known for some time. I have not visited the plant in possibly four years and I would like to add that formerly during my time employed by the company I made it my business and it was part of my duty to go to the plant on pay days to pay the men, but it has been possibly four years since I ceased doing that work.

50. As I understand, then, you have not seen the plant since that time?

A. I have seen it, for I can see it from my yard, but I have not been on the premises for that length of time.

51. Are you able to tell from your premises whether or not the plant is in operation?

Objected to as incompetent and immaterial.

A. I can tell.

52. Is it or is it not in operation at the present time?

Objected to same grounds.

A. Outside appearances would indicate it was not.

53. How long has that been the situation?

Objected to same grounds.

A. I don't know.

53. Has it been for several months or only a few weeks?

1265 Objected to same grounds.

A. I don't know.

54. State whether or not you knew that the plant was to be shut down at or about the time it was actually shut down?

Objected to as incompetent, immaterial and irrelevant.

The MASTER: I do not see the materiality of it but he may answer subject to the objection.

A. I didn't know anything about it.

55. So far as your duties are concerned and so far as pertains to the work done in your office, what change did take place in the shutting down of your manufacturing plant?

Objected to as incompetent, immaterial, irrelevant, having nothing to do with the issues in this case and assuming something the witness has said twice he didn't know about.

The MASTER: As I said before, I do not see the materiality of this evidence, but I must assume it will be made material or it will have no weight one way or the other. The witness may answer subject to the objection.

A. None that changed any duties of mine.

56. What if any changes were made with reference to the collection of bills for gas consumption in your office?

Objected to as incompetent, irrelevant and immaterial.

The MASTER: Same ruling.

A. No change.

57. State whether or not since the first of September, 1901, your duties, and the work actually performed in your office, have been just the same as they were prior to that time?

Objected to as incompetent, immaterial and irrelavent.

A. My duties are the same—consists of the same work.

58. How about the remainder of the work performed in the office?

(Objected to same grounds.)

1266 A. There is no change in that so far as I know.

59. What help is employed there besides Mr. Bickwell and yourself as resident manager?

Mr. IRWIN: Complainant objects to the question as incompetent, immaterial, irrelevant, and as this is an inquiry into the private affairs of a different corporation, one not a party to this suit, I do not think the witness has any right to tell or give away any of the affairs of that company or its business in this proceeding, and I think it his duty to refuse to do it.

The MASTER: One of the allegations of the bill in this case and one of the lines of complainant's proof was that the business of the complainant company was economically administered. Now, why has not the defendant the right to go into the question of the business affairs of another gas company doing business in the same locality to determine the question as to whether or not complainant's claim in that respect is true?

Mr. IRWIN: I don't think they have.

The MASTER: I think it may be material and the witness may answer subject to the objection.

A. There are three others employed in the office, other than Mr. Bickwell and myself.

60. Who are they and what are their duties?

Objected to as incompetent, immaterial and irrelevant.

A. George Alfs, Frank Kelley and Sam Benson are employed there.

61. What does Mr. Kelly do?

Objected to same grounds.

The MASTER: I don't think it will do much harm to show what their duties are one way or the other. The witness may answer subject to the objection.

1267

A. He waits on the window, makes out gas bills.

62. What does Mr. Benson do?

(Objected to same grounds.)

A. Mr. Benson sells gas stoves and assists in the clerical work around the office.

63. Does he also work on the books and assist in making collections at the window?

(Objected to same grounds.)

A. Well, at times he assists in making out gas bills.

64. What work does Mr. Alfs do?

(Objected to same grounds.)

A. He assists in the selling of gas stoves, assists in the making out of gas bills and assists in waiting on people at the window.

65. How long has your office force been substantially the same as it is at the present time?

Objected to as incompetent, immaterial and irrelavant.

A. Oh, I would say two and possibly three years, that is, in number.

66. Since the time of the change in ownership, to which you have referred, what has been your monthly office expenses including help, rent and any other items you may see fit to mention?

Objected to same grounds.

A. I don't know.

67. Who employs and discharges the office help?

Objected to same grounds.

The MASTER: I don't see the materiality of it; I do not see how that tends to throw any light on this inquiry one way or the other.

Mr. TICHENOR: I want to find out whether the resident manager has anything to do or not. I desire to have the question answered.

The MASTER: The witness may answer subject to the objection.

A. It is a hard question to answer; there has been nobody
1268 hired or discharged.

68. How long has Mr. Alfs been employed there?

A. Three or four years; he was there before the change took place.

69. Who pays their salaries?

(Objected to same grounds.)

The MASTER: I do not see the materiality of it.

Mr. TICHENOR: I would like to have it answered.

The MASTER: He may answer subject to the objection.

A. Mr. Bickwell pays me; I don't know anything about who pays the others.

69. Do you know what amount of office rent is paid?

Objected to same grounds.

A. I don't know.

70. What other employés, in or about the office or office building, has your company at the present time and has it had during the past few months?

Objected to as incompetent, immaterial, irrelevant and already asked and answered.

The MASTER: He may answer it if there is anything more to be said on the subject.

A. I have given you the names of all the employés in the office.

71. How many men are employed in your workshop, in connection with your office, if you have one?

Objected to as incompetent, immaterial and irrelevant.

A. I don't know.

72. Have you still a work shop in connection with your plant?

Objected to same grounds.

A. We are still doing work.

73. Yes, but do you still maintain a work shop?

A. We do not maintain a work shop where the shop was
1269 formerly maintained in the rear of the office.

74. When was that work shop discontinued?

Objected to same grounds.

A. I could not say just when—some few months ago.

75. How many men, outside of those whose names you have given, are now, and have been for some months past, in the employ of your company?

(Objected to same grounds.)

A. I don't know.

76. What are Dan Gorman's duties at the present time and what have been his duties during the time elapsing since the changes to which you have referred?

Objected to same grounds and also because already asked and answered.

The MASTER: I think so; I think the witness stated his duties that he had charge of the distributing system.

77. Is that your answer at the present time?

A. I don't know what Dan Gorman's duties are at the present time.

78. Do you know whether or not he is paid from your office?

Objected to as incompetent, immaterial and irrelevant.

A. I don't know.

79. Do you know whether or not he is in the employmentt of your company?

(Objected to same grounds.)

A. I don't know.

80. Do you know whether or not Mr. Eustis, to whom you have referred, is employed by your company?

Objected to same grounds.

A. I don't know.

80. Have you ever known?

(Objected to same grounds.)

A. Yes sir.

81. Up to what time did you know he was in the employ-
1270 ment of your company?

(Objected to same grounds.)

A. The time I don't know.

82. State if it is not a fact that Mr. Eustis, to whom you refer, has,

ever since he came to Peoria, been identified with the complainant company as its superintendent in charge of its works, or in some other similar capacity?

(Objected to same grounds.)

A. When he first came to the city, I know he was employed by the Peoria Gas & Electric Co.

83. For how long a period of time did you know he was so employed?

(Objected to same grounds.)

A. I could not name the time.

84. Have you ever known of his severing his connection with that company?

(Objected to same grounds.)

A. I don't know.

85. Do you know, as a matter of fact, whether your company has ever paid Mr. Eustis' salary or any part of it?

Objected to same grounds.

A. I don't know.

86. In what capacity was Mr. Eustis employed by the Peoria Gas & Electric Co. during the time you knew of his connection with it?

(Objected to same grounds.)

A. He had charge of the manufacturing plant.

87. State whether or not your company is still putting in gas mains and service pipe as it has done in years past?

Objected to same grounds.

The MASTER: How does that become material?

Mr. TICHENOR: I think it will; if I didn't think so, I certainly would not ask it.

The MASTER: The witness may answer subject to the objection.

A. We are still putting in service pipe; there has not been any gas mains laid for quite awhile that I know of.

1271 88. That is your company has not laid any gas mains?

Objected to same grounds.

A. That is the company I refer to, the Peoria Gas Light & Coke Co.

89. How many service pipe has your company put in since September 1, 1901?

Mr. IRWIN: Complainant objects to this question on the same grounds, and I will further state that is inquiring into the private affairs of another company, not a party to this proceeding and I do not think the witness as an employé of that company has a right to divulge the business of that company.

The MASTER: The witness may answer subject to the objecti

A. I could not tell you.

90. Have you a record of it in your office?

Objected to same grounds.

A. I have no record of it.

91. Is there a record of it in your office?

A. I don't know.

92. If there is such a record, in whose charge would it be?

Objected to same grounds.

A. I presume it would be in the keeping of Mr. Bickwell.

93. Do you know what has been the expense of placing such s
ice pipe?

(Objected to same grounds.)

A. No sir.

94. Is there within your knowledge in your office any acco
which will show such expenditure?

(Objected to same grounds.)

A. I don't know.

95. Under whose direction were those service pipes put in?

Objected to same grounds.

A. Under the direction of Dan Gorman, I think.

96. And has anyone else in connection with your compa
1272 any authority to order gas service pipe placed and has th
been anyone having such authority since September 1, 190
If so, who?

Objected to same grounds.

A. Yes sir, I issue the orders for putting in services.

97. These items of ordering and placing service pipe are all
matter of record in your office, are they not?

Objected to as incompetent, immaterial and irrelevant.

A. The issuing of the order for the work to be done is a matter
record, aside from that I have no further knowledge of the matt

98. Who has paid for putting in such service pipe during t
time in question?

(Objected to same grounds.)

A. Do you mean whether the applicant has paid for putting the
in or the company has paid for the labor of putting them in?

99. Who has paid the expense of putting them in, for labor an
material?

Ans. I don't know.

100. How many if any meters has your company set since September 1, 1901?

(Objected to same grounds.)

A. I could not tell you that.

101. Is that a matter of record in your office?

Objected to same grounds.

A. Yes sir.

102. Under whose orders have those meters been set?

Objected to same grounds.

A. They were set under an order issued by me.

103. So far as pertains to those questions, state whether or not your authority is absolute or whether you derive your power from some other source?

(Objected to same grounds.)

The MASTER: I don't see how it makes any difference where he derives his authority so it is done.

Mr. TICHENOR: Yes, I think it does.

1273 The MASTER: He may answer subject to the objection.

A. We have been following the same course for years with regard to setting and removing meters; if a person makes a request for gas and we have gas in the premises an order would then be issued by me for the setting of a meter and if a person removes from one house to another it has been the custom to take out the meter when the person moves; it is the same system that has been in vogue ever since I have been with the gas company.

104. Has there been any change in that regard since the discontinuance of the manufacture of gas in your plant?

Objected to same grounds.

A. There has been no change in our office; it has been the same as has been the custom in the past.

105. The same in all details?

Ans. Yes sir.

106. When you say in the past, how far back do you refer to?

Objected to same grounds.

A. I refer to my knowledge as an employé for the number of years I have been employed by the company.

107. Is your company still furnishing gas to consumers in Peoria?

(Objected to same grounds.)

A. Yes sir.

108. From what source does it come?

Objected to same grounds.

A. From the pipes.

109. Who supplies the gas that goes into those pipe?

Objected to same grounds.

A. The gas works, around in the neighborhood of Persimmon street.

110. Whose gas works are they?

(Objected to same grounds.)

A. I don't know whose they are.

111. How many gas companies are in operation in Peoria
1274 at the present time?

(Objected to same grounds.)

A. I am in the employ of the Peoria Gas Light & Coke Co. and there is a company here called the Peoria Gas & Electric Co.

112. You have heard of that company, have you?

A. They are neighbors of ours.

113. Rather close neighbors, are they not?

Objected to same grounds.

The MASTER: Now, gentlemen don't indulge in this character of examination.

114. Have there been any other gas companies in Peoria during the time you have been in the business?

Objected to same grounds.

A. Not that I know of.

115. Do I still understand you to mean you don't know from what source your gas supply is coming at the present time?

Objected to same grounds.

A. I understand it is coming—Interrupted.

Mr. RITCHER: We object to the understanding of the witness. If he knows, let him say so.

A. I don't know.

116. Have you ever known since the time your plant shut down?

Objected to same grounds.

A. No.

117. Who if anyone in connection with your company keeps the account of the help and their time?

(Objected to same grounds.)

A. Mr. Bickwell the book-keeper would be the person that would have that information.

118. Where is the office of the Peoria Gas & Electric Co. with reference to the office of the Peoria Gas Light & Coke Co.?

Objected to same grounds.

A. The office of the Peoria Gas Light & Coke Co. is at
1275 No. 127 North Jefferson street and the office of the Peoria Gas and Electric Co. is No. 125 North Jefferson street.

119. How long have the offices of those companies been located at those places?

(Objected to same grounds.)

A. Our company has had its office in its present location for 5 or 6 years, I think, the other company has been in its present location probably a year and a half or there abouts—I could not tell exactly.

120. Where is the plant of the Peoria Gas & Electric Co., as compared with the location of the manufacturing plant of your company?

(Objected to same grounds.)

A. They are close to one another; I should judge from 150 to 200 feet apart.

121. How much ground is there between the two manufacturing plants owned by others?

(Objected to same grounds.)

A. I guess the ground adjoins.

122. State whether or not the present location of the Peoria Gas Light & Coke Company's plant is the same as it has been during the time you have been connected with it?

Objected to same grounds.

A. Yes, the location is the same.

123. Has there been any change in the location of the manufacturing plant of the Peoria Gas & Electric Co., since it was first constructed?

(Objected to same grounds.)

A. No, it occupies the same location.

124. Do you know of your own knowledge what if any part of the manufacturing and distributing plant of the Peoria Gas Light & Coke Co. is now being utilized?

Objected to same grounds and also because the question has been asked and answered so far as the witness knows.

A. I don't know.

1276 125. Do you know what company is at present taking care of the repair and improvement account of the Peoria Gas Light & Coke Co. if there is any such account?

Objected to as incompetent, immaterial and irrelevant.

The MASTER: How does that become material, Mr. Tichenor?

Mr. IRWIN: Suppose you were doing it, Mr. Tichenor, whose business would it be?

Mr. TICHENOR: I would like to have the question answered.

The MASTER: I do not see the materiality of it but the witness may answer subject to the objection.

A. I don't know anything about any account.

126. Do you know anything about any such repairs or imp ments and have you known anything about them for the time ing since September 1, 1901?

(Objected to same grounds.)

A. I know we are taking care of all complaints coming t company in the way of the gas not burning, etc., and in ord the removal of meters the same course is pursued as it alway been in the way of issuing an order for the work to be done a know the work is done, but so far as any account in conne with the doing of that is concerned I have no knowledge of it.

127. Who does the buying of supplies and material for company?

(Objected to same grounds.)

A. For any office supplies we need, whenever we need the make known our wants, Mr. Bickwell attends to the buyi them.

128. Who attends to the buying of material, pipes and mete

Objected to same grounds.

A. I don't know.

129. Do you know whether or not any such are being boug the present time or have been during the past few months?

Objected to same grounds.

A. I don't know.

1277 130. What portion of the Peoria district did the Peoria Light & Coke Co. cover in the month of April, 1899?

Objected to same grounds.

A. It covered the city in my opinion pretty thoroughly wit pipes.

131. Did your pipes extend into some of the more densely p lated suburbs also?

(Objected to same grounds.)

A. Yes we went out into Richwoods, I believe.

132. Did you reach North Peoria, Averyville?

Objected to same grounds.

A. No sir.

133. What portion of the territory then covered by you in tribution are you furnishing with gas at the present time?

Objected to same grounds.

A. We are still doing business in the same territory, but are supplying all our old customers as we lost customers at the time second company commenced operations here.

134. Did you lose many or few customers?

Objected to same grounds.

A. We lost quite a number.

135. What percentage of customers have you now as compared with the number you had in April, 1899?

Objected to same grounds.

A. Oh, I would say we have in the neighborhood of 60 per cent.

136. Are there any of your customers who are also supplied by the Peoria Gas & Electric Co.?

(Objected to same grounds.)

A. We have customers who take gas from us and also from the other company.

137. In the same building?

Ans. Yes sir.

138. At the time the Peoria Gas & Electric Co began fur-
1278 nishing gas, what territory did it cover as compared with the territory which your company was then supplying?

(Objected to same grounds.)

A. Well, they paralleled a great deal of our territory.

140. Do you know whether or not that company occupied territory where you were not distributing at all?

Objected to same grounds.

A. I think they did, but I am not sure about that.

141. Are you able to state from recollection any particular locality where such was the case?

A. No, I cannot refer to any particular locality.

Cross interrogatories by Mr. IRWIN:

1. You have referred to a change in ownership of the Peoria Gas Light & Coke Co., of which you are an employé, about two years ago. What do you mean by a change of ownership?

A. I mean when the Peoria stock holders of the old Peoria Gas Light & Coke Co. sold out to a new company.

2. Who did they sell out to?

A. I don't know; but I know some of the officers of the new company.

3. When you speak of the new company, you mean the reorganization of the officers of the old company, do you not?

A. Yes sir, it is still the old company; it was simply a sale of the stock of the old company to different parties.

Re-direct interrogatories by Mr. TICHENOR:

1. Who are the officers of that company?

A. William McKinley is president and George Macomber is secretary and treasurer.

2. Has there been any change in the officers since the sale to which you have referred?

Ans. None that I know of.

1279 THOMAS BUCKLEY, called on behalf of defendant, being first duly sworn, testifies as follows:

Direct interrogatories by Mr. TICHENOR:

1. State your name and place of residence?

A. Thomas Buckley; No. 1007 South Washington street, Peoria, Ill.

2. State whether or not you have ever been engaged in connection with any gas company in Peoria or otherwise?

A. I have been with the Peoria Gas Light and Coke Co. from 1878 until 1900.

3. What had been your business prior to the time you entered the employ of that gas company?

A. I was a mechanic in the wrought iron department, building gas works supplies in the wrought iron line, bridges, and the like of that.

4. What work did you do during the early part of your connection with that gas company?

Objected to as incompetent and immaterial.

Mr. TICHENOR: The testimony goes to show his knowledge of metals, their life and construction.

The MASTER: If you want to qualify him as an expert, he may answer.

A. The first thing I did there was to repair the retort house roof.

5. I do not care about that but what you did during the early years of your connection with the company—not the individual pieces of work?

A. I did anything in a mechanical line that was required to be done; it devolved upon me to do blacksmithing and wrought iron work in general.

6. State whether or not that extended to the different parts
1280 of the mechanical portion of the gas works and there appliances in use?

A. Yes, it went to all the departments about the work, including work in the streets.

7. What other line of work did you do at any time while employed by that company?

Objected to as incompetent and immaterial.

A. Well the repairing of meters and making connections at the office shop—I would have to do that from time to time and I would have other work—straightening up at the works I had to do that and sometimes had to go on the streets to fill in time; I being the only man I found a job in all departments.

8. State whether or not from your work in metals, as you have described, and your experience in connection with the operation of the Peoria Gas Light & Coke Co.'s plant you are familiar with the life of the different kinds of metal that enters into the construction of a gas plant?

A. Yes to a certain extent by observation—I get my information that way.

9. Are you familiar with all the different appliances and apparatus necessary to constitute a complete gas plant?

A. Yes, except, of course, there are more modernized methods now than were used in my experience but what is in general use my experience gives me some idea concerning it.

10. What portion of the time during your employment by that company were you at the works themselves?

Objected to as immaterial.

A. I put in practically all of my time there for some 12 or 14 years after they refused to take me away to do anything outside.

11. Was that during the latter portion of your time there?

A. Yes it took all my time and attention there then on account of Peter Coffey's disability—the last five years I would say
1281 and for about two years before he died there was an agreement between us that I was to have charge of the works.

Mr. IRWIN: I object to the agreement the witness had with Mr. Coffey and move to exclude it as incompetent.

The MASTER: Yes, I think so.

The WITNESS: Well, I was there; that is all it implies.

12. State whether or not at any time while you were there you had exclusive charge of the work?

A. I was given exclusive charge of the works by Mr. Coffey for about seven years.

13. Are you familiar with those portions of a plant known as washers, scrubbers, purifyers, exhausters, holders, engines and boilers?

Ans. Yes sir.

14. State whether or not the power required in a gas plant is much or little?

(Objected to as immaterial.)

A. There is not much power required.

15. How large an engine was in operation at your plant during the time you were there?

(Objected to as immaterial.)

A. Well say a 10-horse power engine although it was not required.

16. What is the life of a steam engine in a gas plant considering the service demanded of it?

Objected to as immaterial.

A. We had one there 30 years running 24 hours each day with very few stops.

17. What was its condition at the time its use was discontinued?

(Objected to as immaterial.)

A. It was in good serviceable condition; nothing was ever bought for it but once after it was tore out it was practically renewed.

18. Why was it replaced?

1282 A. We had to put in a larger exhauster and a smaller engine took its place with the exhauster on the same bed plate; we changed it from a 10 inch to a 16 inch plant.

19. What work was there for that engine to perform in your gas plant?

(Objected to as incompetent and immaterial and not applying to the plant in question.)

A. Running the exhauster.

20. What portion of the 24 hours does an exhauster run?

A. It runs continuously, maybe it will not stop for 6 months.

21. What is the life of the boilers and settings used in connection with the steam engine for such purpose?

Objected to as immaterial unless applied to the plant in question.

A. Boilers and settings are certainly good for 15 or 18 years if in good condition to commence with.

22. State whether or not from observation and experience in the gas business you know the life of the various parts of the operating plant?

A. Well, I have an idea and experience that enables me to compute it within any given time, within a time not practically far off.

23. I am speaking of those parts that are in the works themselves—I am not speaking of street work but in the building itself?

A. I understand that.

24. What is the life of the purifyers?

A. I have seen a cover to be destroyed by the action of the sulphuretted hydrogen but the boxes are practically perfect yet. The cover was destroyed but the box itself might last for 50 or 75 years longer.

Complainant objects to the answer as not responsive and moves the court to exclude it.

1283 25. What is the reason for the difference in the life of the parts?

A. The top is wrought iron or steel, it is immaterial which, and the other is cast iron.

26. Do you know why it is that the top was destroyed while the box itself is practically permanent?

A. It has a greater affinity for taking up the sulphur out of the sulphuretted hydrogen and the vapor passing off the lime; in my experience lime has been used in the purifying process.

27. What is the life, if you know, of the scrubbers and washers?

A. They are practically indestructible except the filling that might be inside—whatever is used in the scrubbers—trays are liable to be broken from recleaning and handling.

28. Of what material are they made?

A. They are usually made of wood; I have made some of iron that were in a perfect state for 10 years in a water gas plant but in a coal gas plant the gas passes through scrubbers filled with wooden trays which are cleaned once a year or thereabouts and they are apt to be broken and have to be replaced; I had a duplicate set for that reason so we always had time to clean and repair the other set ready for use the following year.

29. What portion do you refer to as being practically indestructible?

A. The cast iron body—the shell of the scrubber.

30. Does your answer apply to the washers also?

A. Yes scrubbers and washers are the same thing practically.

31. Through what various devices does the gas pass from the time it leaves the retorts until it is delivered into the holders, if you know?

1284 A. It passes through the hydraulic main where it precipitates the largest volume of the tar, then it goes to the condenser where it is cooled, and whatever tar is left is removed, it passes then to the scrubbers or washer to take off the ammonia, then it goes to the purifying boxes where is removed whatever sulphur is left in the gas, from there it passes through the special meter into the holder.

32. What is the life of a condenser?

A. Well, I might put that at about 50 years; there is a deterioration takes place in a condenser; the fresh water contains mineral properties that affect the cast iron on the outer surface where the water comes in contact with the iron there is a rust going on there—there is a deterioration there I could not compute, but I would say its life would be about 50 years. The necessity frequently occurs to remove them before that time, however, on account of the increased consumption, enlarging the plant, etc.

33. Do you know approximately the life of a gas holder?

A. I have seen them 40 years old with the iron in pretty good shape and I have seen them cut one part down that was about 50 or 60 years old but it was destroyed through carelessness; it was the first gas holder in the plant down here and it was removed a few

years ago; I believe it was built along between 1850 and 1860 somewhere.

34. That was one you cut open?

A. Yes, a portion of that was gone; they were making gas of coal and it was not purified and sulphur got in there and poor gas and commenced to eat the iron.

35. That would be just the same then as the destruction of the cover of a purifying box?

A. Yes, it was all right on the outside but it was eaten on the inside from the sulphuretted hydrogen arising off the water in the gas.

1285 36. Suppose the gas is properly purified, what in your judgment would be the life of a gas holder in service?

A. In that case there would be very little deterioration to a holder on the inside, the air never comes in contact with it and pure gas should not affect it at all.

37. How is the outside of a holder protected?

A. Outside it should be painted from time to time and all that is visible to the eye can be detected; the water can be changed in the holder occasionally, especially if the water is of a hard mineral nature that would affect the iron. I have seen water on the holder down there so strong of sulphur that I came pretty near getting caught with it one time; I put a jug down to cool the water and I got some of it in my mouth and the water was so strong it caught my breath.

38. I don't care for that.

A. No, but that shows the effect that water would have on the iron. If impure gas went into the holder the water takes up a good deal of the impurities and it destroys the iron both inside and out in the course of time.

39. Do you know how long this holder you say was cut up had been in service?

A. I cut up some sheet iron from a holder in Cincinnati that was supposed to be 40 years old.

40. (Interrogatory 39 repeated.)

A. That holder was built, I should judge, about 1855 or 1856 and was cut up here about 5 or 6 years ago.

41. What is the life of a tar and ammonia well?

A. There is nothing to interfere with the life of them, it is practically indefinite as to time; they are built of hard brick and cement and are practically tight and if they are away from frost they will stay until doom's day.

42. Do you know what the life of a hydraulic main is?

1286 A. There is no deterioration in a cast iron hydraulic main in the wrought iron there is.

43. Of what are hydraulic mains constructed?

A. Of both wrought and cast iron; a cast iron main would not be destroyed for an indefinite time but wrought iron is affected; acids in the crude gas acts upon that.

Cross interrogatories by Mr. IRWIN:

1. When did you commence to work in a gas plant?
A. In May, 1878.
2. Was that your first experience?
A. That was my first experience there.
3. What had you done prior to that time?
A. Worked for Stacey & Co., gas holder builders; I learned my trade with the firm in Cincinnati erecting plants outside occasionally.
4. How long have you been engaged in that business?
A. Since I was about 10 years old, along about 1856.
5. Did you ever work in a gas plant prior to the time you worked in the Peoria Gas Light & Coke Co.'s plant in Peoria?
A. I worked a little while at the Cincinnati plant but it was only a short time; my brother was in the office there though and that took me there a good deal.
6. What did you do there when you worked there?
A. I was a mere boy putting purifying boxes together at the time.
7. What did you do when you first entered the employ of the Peoria Gas Light & Coke Co. in Peoria?
A. I went to work as a mechanic and blacksmith.
8. What kind of work did you do?
A. The first work I did was taking the corrugated iron off retort house roof and prepared it for slate.
1287 9. How long did you work at that?
A. I guess a couple of weeks until I had it done ready for the slate.
10. Do you know how long that roof had been on there?
A. No, I don't know, it was on before my time.
11. How do you know it was on before your time?
A. Because it was there and the iron was all honeycombed with holes when I came there and the rain pouring through.
12. You don't know how long it had been there when you took it off?
Ans. No sir.
13. Then you don't know whether it had been there for any particular length of time of your own knowledge?
A. No, of my own knowledge I do not.
14. What did you do next after you put on that roof?
A. Worked about the works principally for a few years, at general repairs.
15. What did you repair?
A. The engine and looked after repacking it, etc.
16. How often did that have to be done?
A. The engine was in bad condition and had to be looked after from time to time.
17. When did you first find it in bad condition after you went here?

A. It was in bad condition from the time I went there for six months afterwards; it took a man from Nicol & Burr's two days every week to fix the engine.

18. Is that the engine that lasted so long that you have spoken about?

Ans. Yes sir, that was the same engine.

19. What was necessary to do to the engine?

A. The rock shaft was not adjusted properly and the engine was laboring against itself and a competent man was not sent
1288 there to adjust it.

20. How long did Nicol & Burr's man work at it?

A. In my time there was a man sent there every week sometimes for a day or two for nearly a year.

21. Did they change any of the parts?

A. No, they did not make no changes only gave it an overhauling, a little packing and tightened up some of the bearings; the engine was working against itself and could not work right.

22. How long had the engine been at work before you went there?

A. I don't know, it was built in the old Voris foundry.

23. Was that the same engine that was there during all the time you were at the works?

A. Yes sir.

24. That was the only engine in the works during all that time

A. Until we got the new exhauster there and 16 inch pipe put in, that was about 9 years ago, I guess; the same engine was used all the time up to that time and I never had any trouble with it after I began taking care of it myself.

25. Did you ever have to make any other repairs to the engine than those made by Nicol & Burr's man?

A. No.

26. You never had any repairs during all that time?

A. I put a steady guide there.

27. Answer the question, did you never make any other repairs to the engine during all the time after it was fixed a few months after you came there until it was finally abandoned?

A. Yes, there was little repairs done; it was once repaired when two piston rods had to go to the shop to get them lathed valve stand and valve rod.

1289 28. Were there any other repairs that had to be made?

A. A guide for the valve stem was all.

29. Why did you get a new engine?

A. We had a 10 inch pipe and we put in a 16 inch and we had to have a 16 inch exhauster and an engine was furnished on the bed plate with the exhauster and that did away with the other engine.

30. Was not a 10 horse power engine of sufficient power for the other exhauster?

Ans. Yes, more than sufficient.

31. Then why did you get a new engine?
A. The old engine was not adjusted to the bed plate.
32. Could not that engine be adjusted as well as a new engine to do that work by a machinist?
A. It could be done, probably, but I am not positive about that either: there is a flange there and whether that flange would admit of cutting off at the desired elevation I could not say.
33. Could not you reset the old engine so as to accommodate it to the new exhauster?
Ans. It would change the plans; the plan was not made to do that; it was not intended to be done by the architect who drew the plans.
34. Could not that engine be reset just as a new engine could have been set if it was in good condition?
A. Our architect did not look at it that way, he did not want it.
35. You were the machinist in charge, were you not?
A. No sir, I was not.
36. What became of that engine after it was taken out?
A. It is down at Gipps' brewery now still in operation.
37. How do you know that it is still in operation?
A. We sold it there and they are using it for some purpose down there I believe.
38. How do you know they are?
1290 A. A man down there told me they were using it; I have not gone in to look at it.
39. Did you ever see it down there?
A. Yes, I saw it but it was not in use when I saw it; they do not use it every day.
40. Did you see it in operation down there?
A. No, not in operation. We used it after taking it off the exhauster—we set it up in place of a Westinghouse engine and run the blower for the water gas plant.
41. How long was it there?
A. About four days in an emergency until we got a new engine.
42. Why didn't you continue to use it there?
A. At that time the engine run away and broke down, the governor did not control it.
43. Why didn't you retain that engine there?
A. We got two Westinghouse engines duplicates there and we did not require it.
44. Do you know what that engine sold for, when you sold it?
A. $60.
45. What was a new 10 horse power engine worth at that time?
A. I don't know, I was not in that business.
46. How many exhausters were placed in that plant during the time you were there?
A. There was one there when I came and it remained there until the present exhauster was put in place.
47. How long ago was the present exhauster put in place?

A. I could not give the date but I should judge it was about 10 years ago.

49. How long had the other one been there to your knowledge?

A. It was there when I came and up to the time the new
1291 was one put in would be about 12 or 13 years; how long it was there before I came I don't know.

50. How long had the washers you speak of been there?

A. Well, the washers that were there—everything of the old plant is obliterated today; those old washers were connected with 10 inch pipe but they were all put out of the road when the new building was put up and the 16 inch connections were made.

51. You came there about what time?

Ans. In May, 1878.

52. Do I understand you to say that all of that machinery was replaced while you were there?

A. Everything has been replaced.

53. New machinery of all kinds so it is substantially a new works, is it not?

A. Practically new works; the old retort house is all that is left of the old.

54. What is the condition of the old retort house?

A. The stack and retorts were used up on the 6's; the 3's had not done much service but they would not continue to use them on account of the coke they consumed—direct heat.

55. Why did not they use them?

A. They used them when necessary but when we went into the new building the connections were cut off from them entirely, the intention being to throw them out and get them out of the road so the building could be continued on and made complete; the building was only half completed.

56. Why did they abandon those old retorts?

A. They were abandoned to try to start into the new and get them out of the way.

57. Why did they want to put them out of the road?

A. The plant was not up to date; they had outlived their usefulness; they were expensive to use; it was not a modern plant by a long shot.

1292 58. How long had they been getting out of date?

A. Well benches of 3's and direct draft has been out of date anyhow for 15 years or more.

59. Do you know when these benches were built?

A. The stack on the 3's was built before I came here and we put in 6's—tore down the old stack and built a special stack for a bench of 6's.

60. How long had those benches been in use during the time you were there—the benches of 3's?

A. I don't think they were used more than 1½ years.

61. After you came there?

A. No, I am speaking about the retorts, the settings there.

The benches were used alternately every winter, when one bench was capable of supplying gas for the city we used those on the south side in summer and those on the north side in winter.

62. Answer my question. How long had those benches of 3's that were abandoned been used to make gas while you were there?

A. They were used at least every year but they were laid up occasionally, of course, for repairs.

63. How frequently?

Ans. About on an average of every 5 or 6 years they would be reset.

64. What do you mean by resetting?

A. Putting the retorts in the arches.

65. How much of the time were they used when used at all?

A. 4, 5 and 6 years in use.

66. What portion of the year?

A. Sometimes they would be run right along for that time.

67. How long had the benches in the new part been in use during the time you were there?

A. Well, they had not been long in use; I don't suppose more than 6 or 7 months probably.

1293 68. Do you know the condition they were in after they had been in use 6 or 7 months?

A. They were in pretty bad condition but I had no control over that.

69. Answer the question, what condition were they in?

A. They were over heated and sagged, burnt out, the settings settled.

70. Does that happen frequently in the manufacture of gas?

A. No.

71. How frequently does it happen?

A. It is a thing that will happen in time but it should not happen inside of three years.

72. How frequently did it happen to these benches during the time you were there?

A. When it happened it happened and there was no frequency about it because it is in the same condition today it was when it first occurred; they have not been reset or put in since.

73. Those were the new benches that were put in?

A. It is the same bench yet and in the same condition.

74. How frequently did it happen to the old benches?

A. When they would outlive their usefulness it would be about on an average of 4 years; they had been shook up pretty bad and had to be taken out and reset.

75. How long had the scrubbers that were in the old gas plant where you worked been there during the time you were at the works?

A. I have not got the dates but it might have been somewhere about 1886 or thereabouts; I forget the date but I think maybe it

was back that far when that building was put up and that plant put in and the scrubbers are there ever since.

76. How frequently did you have to repair those scrubbers during that period?

1294 A. There was 5 years there they required no attention practically in the way of cleaning but conditions brought it about where I had to clean them every year.

77. What were your duties down there from time to time in that gas plant?

A. To keep everything in order, see that everything went along all right and smooth and have an eye over the men.

78. Were you the superintendent in charge?

A. No, Mr. Coffey was superintendent, either Peter or his brother after him.

79. And you simply did what he told you to do?

A. That is what I had to do.

80. You were simply a workman there?

Ans. Yes.

81. And your work was looking after the machinery?

A. Anything about the works that required attention I was supposed to know it and look after it.

82. Did you have any assistance in looking after it?

Ans. No.

83. Did you make the repairs yourself?

Ans. Yes.

84. Were you busy all the time?

Ans. Good and busy.

85. Was that all you had or attempted to do—to make repairs about the place?

A. Well, no not exactly: if I had not enough to do down there, I would be put on the streets to put in services, tap mains, or make connections, repair meters, breaks in pipe, and one thing and another.

86. Did you have anyone else working in making connections and fittings and repairs?

A. Only the necessary labor that was required usually on the pipe down there; I laid all the pipe down there and put all the machinery in place, I just had laboring help.

87. Did you have any assistance in cutting and fitting the

1295 pipe you put in?

Ans. Practically no assistance outside of common labor.

87. What did they do?

A. If the load was too heavy, they would have to take hold of one end when I took hold of the other and assist in that way. Peter Coffey was pretty close; he did not want anybody to eat any idle bread but himself; I had no picnic. He made that remark to me one day; they had no surplus men around; they did not want one man looking at another, they wanted every man to work; they were close men.

88. How many purifyers have been in those works since you went there?

Ans. The present set of boxes is the second put in there.

89. When were the last ones put in?

A. About the same time that building was put up, along about 1886 I think it was.

90. You had been there at that time about 6 or 8 years?

A. I had been there a good deal longer than that. I must be mistaken about giving the date there; I am not positive enough to swear to any date or time, for time did not bother me.

91. State about how long you had been there when the new building was put up?

A. That is pretty difficult; it has gone beyond my recollection, I don't recollect about those things.

92. About how long ago was the present purifyers placed in that building?

A. I don't remember how long or precisely what the date was but I should judge they are in there about 9 or 10 years, it might be 12 years.

93. How long will the cover of a purifyer last?

A. Those covers had to be replaced since they were put in there.

1296 94. How frequently?

A. Well, they were changed once on the old boxes and the last boxes we got have been changed once only and it was brought about by conditions over which I had no control; Thomas Coffey——

95. (Interrupting.) Coffey was an expert gas man, was he not?

A. He was the superintendent after his brother's death.

96. He was an expert in the business, was he not?

A. He was president before his brother died and had been president for a long time.

97. He had been in that business a great many years?

A. No, he never was practically in that business or had any practical knowledge of the business until he came to Peoria.

98. How long ago was that?

A. He was here for a good while but he was not identified with the gas company only as a stock holder.

99. Was not he identified with the gas business immediately upon coming to Peoria?

A. Yes, I guess he had his stock before he came to Peoria.

100. And he immediately began to work for the gas company when he came here?

A. He got stock enough so as to be a director.

101. That was about as long as you had been there?

A. No sir, not by a good many years, 8 or 10 years anyhow, or more than that.

102. You had been there longer than he had?

A. The only active interest he took in that plant during his brother's life was when his brother was away for his health in Cali-

fornia or Europe, then he acted as superintendent in his brothe absence until he was appointed president.

103. How long had the purifyers that had been replaced by t one now there been in use?

1297 A. I don't know, for they were put in before my time.

104. How long had they been there during the time yo were there?

A. That is bringing the old question back again to that date; will say 10 years more or less.

105. How many times had they been repaired during that pe riod?

A. They were repaired once; there were patches put in there to cover the leaks where deterioration had taken place.

106. Were there any other repairs except the patches?

A. No sir.

107. What did they use for purifying at that time?

A. Lime.

108. How long did they use lime as a purifier?—up to that date

A. They used lime always in my time there.

109. When did you leave there?

Ans. About May, 1900.

110. Why did you leave?

A. The company changed hands and I left at the request of Mr. McKinley; I never had any acquaintance with him and I don't know anything about why I was put out but I was put in the back- ground.

111. Do you know of any other purifyer used in the manufacture of gas than lime?

Ans. Yes, there is oxide used.

112. As an expert gas man, which is the better, lime or oxide as a purifier?

A. I have had no experience with oxide.

Mr. TICHENOR: We object to the question because the witness has not qualified himself as an expert gas man.

The MASTER: I think so, he has not qualified as a gas manufact- urer.

The WITNESS: They had an expert down there at one time and started to use oxide and it was a failure. I guess most of the

1298 citizens remember the time.

113. What other machinery is used about a gas plant be- sides what you have named viz: the engine, scrubbers, washers and purifyers?

A. The exhauster, of course. Outside of that there is practically no machinery unless you speak of the motor running and blast or the ammonia works.

114. Don't it require some machinery to exhaust the ammonia?

A. No no machinery is required.

115. It is an ammonia concentrator, is it not?

A. No, it is not a concentrator although you may have a concentrator at the new plant and use it now.

116. What is the technical name for an ammonia plant?

A. A plant for the manufacture of sulphate of ammonia.

117. Do you know whether the plant of the Peoria Gas Light & Coke Co. was a modern up-to-date plant?

A. Well, it was getting to be an up to date plant.

118. How do you know?

A. From my experience and knowledge and from reading gas light journals and the like of that they were putting in what was modern and improved.

119. What gas light journals did you read?

A. Coffey used to take them there and I read them once in a while.

120. Which ones did you read?

A. The Western Gas Light Journal and anything that happened to come along on the gas question—pamphlets, circulars and papers that came there.

121. Name them, who were the authors?

A. I didn't pay much attention to the authors, I only had time to snatch a little time and look over the papers and read them.

1299 122. I understand you to say that a scurbber or washer is substantially indestructible?

A. The iron part or shell I should say was in ordinary use.

123. Is a washer or scrubber made of cast-iron?

A. I have seen washers made of wrought iron—so-called washers; I never saw a scrubber made of anything else but cast iron except the material that might be used in the interior.

124. Didn't you testify on direct examination that a scrubber and washer was the same thing?

A. Practically the same thing, they are both used to remove the ammonia from the gas.

125. Do they perform any other office in the manufacture of gas than to remove the ammonia?

A. To clean it, what the water takes out; it removes the ammonia and also some of the lamp black and a little tar is precipitated with it.

126. Anything else?

A. I don't know as I am experienced enough in chemistry to know what other chemical ingredients might be eliminated with the water.

127. What is the difference between the manufacture and structure of a washer and scrubber?

A. I used to make scrubbers when I was a young fellow in the shops—Interrupted.

128. Answer the question.

A. I can hardly tell the difference. I have seen washers for a small plant 18 inches deep, 6 feet in diameter with 3 or 4 perforated plates where the water circulates through the holes and the gas comes up and makes a roar and a noise continually; that was

what we called a washer, and it also might be called a scrubber; that was made of wrought iron in those days when the business was in its infancy.

1300 129. You call that a washer?

Ans. That was called a washer.

130. What is called a scrubber?

A. It was called a scrubber also, it don't change its duties at all by changing its name; some people call them scrubbers and some washers.

131. Do you mean to be understood as saying that a washer and a scrubber are the same thing in a gas plant?

A. Well, yes, I would say so.

132. Are they manufactured alike?

A. No, they are not manufactured alike, there are different patents covering them.

133. What is the structure of the washers and scrubbers in the old gas plant? Are they made of wrought iron or cast iron?

A. You are multiplying the terms there, washer and scrubber; use one term or the other; if you say washer I would take it the same as scrubber, and if you say scrubber I would take it as a scrubber and washer.

134. You are familiar with the washers and scrubbers in the old gas plant, are you not?

A. You are using a double term there again. If you say washer, I say—Interrupted.

135. Is there a washer in the old gas plant?

A. There is a washer there at present.

136. Are you familiar with its construction?

Ans. Yes.

137. Do you know whether it is made of wrought iron or cast iron?

Ans. Cast iron.

138. How high is it?

Ans. 40 feet.

139. What is its diameter?

Ans. About 10 feet.

140. Is it solid cast iron?

A. Yes about from an inch to an inch and one quarter thick.

141. Is its whole length and diameter solid cast iron—any joints?

Ans. 4 sections.

1301 142. Is it jointed horizontally?

A. Yes, every 10 foot there is a flange joint.

143. How long has that washer been there to your knowledge?

A. Well, that is the same old question again—about 10 or 12 years, somewhere thereabouts; I am not sure.

144. Did you ever repair it during the time you were there?

A. I cleaned it out and replaced the trays.

145. How frequently?

Ans. Well, the last 5 years every year we had to change them.

146. How long did it take you to do that?

Ans. From 3 to 4 days.

147. How did they manufacture gas there during the time you were making those repairs?

Ans. The same old process.

148. What do you mean by "the same old process"?

A. With the exception of scrubbing it, it was by-passed and went on into the holder without passing through the scrubber.

149. Did they have any washer in that building?

A. No, we had a condenser there that I utilized with a little ammoni-cal liquor there to wash the gas with while the scrubber was being cleaned—so as to wash the gas a little before it went into the purifying boxes.

150. How large a condenser was there in that building where you worked?

Ans. A pretty large condenser, equivalent to the 16 inch capacity of the pipe.

151. How is a condenser constructed?

A. A tubular condenser, divided into four compartments; the water goes in at one end and works up and down and flows out at the other; the gas leaving meets the cold water coming in and the temperature of the gas is reduced before it enters the scrubber.

152. Does the old gas plant contain a scrubber besides the washer?

Ans. I said before the term applies to one vessel; I will use the word scrubber and leave washer out; I don't know anything
1302 about the washer when I say scrubber.

153. Are any pumps required about a gas plant?

Ans. Yes sir;

154. How many?

Ans. Oh, there is a pump for ammonia, tar pump and water pumps.

155. Do they require any renewing or repairing?

A. Most undoubtedly.

156. How long will one last without it?

A. Oh, that is owing to circumstances; they can run along without repairing but about the length of time they would last I don't know; we never had to throw a pump away.

157. Were the pumps ever changed during the time you were working in the old gas plant?

A. Yes, we had to put in bigger ones when the larger volume required it.

158. What became of the old pumps you had there?

A. They were put to other uses; one of them was connected and set up as a reserve for the ammoni-cal liquor in case the other pump should be stopped—to make a duplicate.

159. What became of the other pumps?

A. They are in their possession—they were left in their possession there.

160. Why did you have two pumps for some things—is it necessary to have two?

A. For some things it is; when they have to run all the time it is a good thing to have duplicates; they need a rest once in a while.

161. What do you mean by their needing a rest?

A. If one had to be overhauled you would have to do without water unless you had a supply in reserve to answer the purpose; we had two river pumps working at different places so we should not run out of water.

162. Did they have to be repaired?

Ans. Yes sir;

1303 163. How frequently?

A. They required general attention; when a repair is required it is required.

164. What repairs did you make to that?

A. It may have to be repacked once a month.

164. Did you repair them?

A. Yes, say once a month more or less.

165. Did all of them have to be repaired in that manner?

A. Yes, wherever you find them defective; they have to be looked after all the time.

166. How frequently would you find them defective?

A. As to the frequency it is difficult to say; it might be a week and it might be three months.

167. How long has the present hydraulic main in that plant been there?

A. That was put in with the plant in the new building.

168. Has that deteriorated any during the time it has been there?

A. I don't know; I never looked into it since it has been there.

169. How long had the hydraulic main been in use that was there previous to the putting in of the present one?

A. One of them was before my time; the other one was put there some eight years or thereabouts afterwards.

170. Why was the new one put in?

A. The old one had but three openings for benches of 3's and we put in benches of 6's and for each section of the hydraulic main we had to have six openings for the stand pipe.

171. What became of the old hydraulic main?

A. It went to the cupola.

172. What do you mean by the cupola?

1304 —. It went to the foundry where it was melted up into other material.

173. Then that hydraulic main you speak of did deteriorate, did it not?

Ans. No.

174. What was it worth when taken out?

A. There was no effort to sell it to continue its use; it was sold for scrap iron.

175. If it was just as good as when it was new why did you sell it for scrap iron?

A. The iron was good but the purpose for which it was originally made—it had outlived its time, it was not up to date.

176. Then it had deteriorated?

Ans. No, not the material.

177. Could it be sold, or was it worth as much as when it was new?

A. As scrap or pig metal it was.

178. Well, for the purpose for which it was used?

A. No, it had outlived its usefulness; it would do as well as when it was new if it were put in again in a small plant with a bench of 3's.

179. Would it sell for as much when taken out as when it was new?

A. Most everybody expects a bargain in a second hand article, it certainly would not sell for as much on the market and in that way its value had deteriorated but not otherwise.

181. What became of the washers taken out of the building during the time you worked there?

A. Them old washers were made up into washers in the water gas plant; they are down there now; they have been changed and remodeled and made washers out of them for the water gas plant.

182. Who did that work?

Ans. I did.

183. Explain in what manner they are now used in the 1305 ammonia plant?

A. They are not used in the ammonia plant but in the water gas plant.

184. In what manner are they used there?

A. Used as washers, or scrubbers, just as you put it; they are still used for the same purpose only they are reconstructed and changed; the shell is still used for the same purpose.

185. Are they wrought iron or cast iron?

A. There is only one cast iron, the rest wrought iron.

185. How many washers were taken out at the time of the rebuilding of the plant?

A. There were two old steam boiler shells about 48 inch shells.

187. What was their thickness?

A. I should judge them to be about 8 gauge; they had seen a good deal of use in the boilers and were reduced to No. 8 gauge.

188. During the time you worked in that plant it was substantially reconstructed and rebuilt, was it not?

Ans. Yes sir.

189. That included the plant proper, did it not—the building?

A. Yes, everything but the retort house—all the pipe and mains around the place.

190. The retort house was abandoned, was it not?—the old one?

A. Yes sir.

191. How long ago was it abandoned?
A. A little over 2½ years ago.
191. Do you know why it was abandoned?
A. It was not necessary to run the new plant and old plant too.
193. Was that the only reason it was abandoned?
A. The intention was to abandon it and put in a new up-to-date plant—a modern plant.
1306 194. Why was it the intention to do that?
A. To be up with the times.
195. Had it deteriorated any?
A. The results were not as satisfactory as was desired.
196. Had it deteriorated any?
A. Do you mean material or in its value?
197. The material and everything that was in it,—the retort house?
Ans. Yes, it was used up in a worn out dilapidated condition when it was shut down by long use.
198. How long had it been in that condition during the time you worked there?
A. You put the question so ambiguous I don't understand.
199. How long had the old retort house been in that deteriorated condition during the time you worked there?
A. A portion of it, the retorts, were new two years previous; the other portion had been used up to the time they were laid down and the retorts was burned out at that time; they had run about three to 3½ years—the 6's.
200. All you know about the gas business is simply from being a general mechanic around the works there for a number of years?
A. That is about right—the opportunities it gave me.
201. And your observations during that time is what you have been testifying about?
Ans. Yes sir.
202. You spoke of a gas holder being good for 40 years. Did you ever see one that had been in existence for 40 years?
A. The old gas holder we cut down there was about 40 years old and it was in pretty bad shape.
203. How do you know it was that old?
A. I knew the man who put it up and about the time he put it up.
204. When did you first see that holder?
A. I did not see the holder until 1878.
1307 205. How long had the holder been there after you came there in 1878?—how long before it was abandoned?
A. It was removed about 7 or 8 years ago and a new relief holder put in the same tank, the old holder taken out.
206. Was not that longer ago than 6 or 7 years?
A. I hardly think so.

207. Had not its use been abandoned long prior to the time it was taken out?

Ans. It had been out of use longer than that, that is right; it was taken out 7 or 8 years ago but had been out of use a couple of years before that.

208. Why was it abandoned?

A. It was useless; it was in a dilapidated leaky condition; it never was a good job.

209. How do you know?

A. I saw how it was constructed and it was my business to build them; it was too weak on the bottom.

210. When did you build a gas holder?

A. I built them before I came here—worked at it right along.

211. How old were you when you came here?

A. Somewhere around 35, I guess.

212. Where did you build a gas holder prior to the time you came here?

A. I worked for Stacey & Co., putting them up in the shop, and built some outside at Maysville, Ky., —— Ky., and Madison, Ind.

213. What did you have to do with the construction of the holder at that time?

A. I practically superintended it, I was foreman for the firm.

214. You did not build them yourself except you were working for the firm that did build them?

1308 A. The holder would not have been built if I was not there, I was employed to do that work and carry that business on.

215. Employed by whom?

Ans. A man -ed Chas. Graham of Cincinnati; I built them three holders.

216. Was he the firm that built the holders?

A. He was the firm that built the holders and I was working for him as foreman; it was a side line in his business while I was in his employ.

217. When did you first see this holder in Peoria?

A. About May 10, 1878.

218. How long had it been there when you saw it?

A. I don't know anything about that at all.

219. Then when you speak of its having been there 50 or 60 years you stated something you didn't know of your own knowledge, didn't you?

A. When Mr. Griswold was an officer he said——

220. Don't state what Mr. Griswold told you but what you know of your own knowledge?

Mr. TICHENOR: We object because the witness has not at any time testified that or any holder had been in use 50 or 60 years.

Mr. IRWIN: I understood him to say so and I think the record will so show.

221. What holder do you know of having been in existence and use 50 or 60 years?

A. I don't know of any holder that has been in use 50 or 60 years, for 50 or 60 years ago holders were so small they would have to be taken out and bigger ones put in their place and it is not possible that a holder could have an opportunity to live that long even if it would.

222. How long is a holder ordinarily used and in use?

A. Well, there is a holder in Cincinnati that I know was
1309 built in 1852.

223. I am asking you ordinarily how long they are in use?

A. I have to tell you what I know.

224. If you don't know how long they ordinarily last, say so?

A. Well, they tell me, of course I don't know, it is only from repute that the holder was 40 years old.

225. I want your own knowledge?

Ans. I know nothing of that myself but the foreman told me that holder was in for 40 years.

226. I object to your stating what anybody told you?

A. Well this 80 foot holder down at those works now I had been here 18 years or there abouts when that holder was made into a telescope; that holder was built some years before I came here and the iron was still good, all that was necessary was to put a heavier sheet on the bottom for the cup sheet and use the other for the upper lift.

227. Then it would require a change in the character of the holder, would it not?

A. It made a telescope out of it.

228. What kind of a holder was it before?

A. A single lift.

229. Don't holders frequently spring leaks?

A. Very seldom they spring aleak; there may be defective workmanship and the holder have a little leak in it that is insignificant.

230. They do spring leaks, however?

Ans. Yes sir.

231. As a matter of fact has not the holder in the old gas plant been leaky?

A. That had been leaking pretty bad but I don't know whether it is leaking now.

232. During the time you knew it, it was leaking?

A. I stopped those leaks in my time there.

233. How frequently?

A. I stopped them once for good.

1310 234. Don't you know they have been leaking for the last ten years more or less?

A. They have leaked for a considerable time but have not been leaking for a good many years.

235. How do you know?

A. I was there up to two years ago and, of course, it was my business to know.

236. Did not that plant have a large leakage of gas from some source?

A. Not at the plant.

237. Had it not as a matter of fact a large leakage of gas?

A. I didn't smell it, it was not around the plant.

238. Suppose it had leaked from the holder would you have smelled it?

A. I would know it and very likely smell it.

239. Did you work up in the holder or on it?

A. You would get to know it after awhile anyhow; on one occasion when blasting rock one of the stones came down on the top of that 90 foot holder there and we knew it next morning.

240. Was that a large leak?

Ans. A pretty good leak.

241. That would be more than an ordinary leak in the tank, would it not?

Ans. Yes, leaks don't occur accidentally of an ordinary kind.

242. How do the ordinary leaks occur?

A. The action of the ammonia upon the paint that is used on the joints to seal it, it cuts the red lead and oil and, of course, when that is cut away from there the joint is gone.

243. Does the ammonia affect the iron?

A. Yes the ammonia will affect the iron but it is not the ammonia you have reference to; there is an oil, we call ammonia ordinarily, about works which we pump out of the drips; it
1311 is in a liquid state; that is frequently inside of the holder maybe floating on the water; as the holder rises and falls it adheres to the iron and gets into the seams and that causes leaking.

244. Does that affect the iron?

A. It don't affect the iron at all; it is not the ammonia of commerce but it is usually called ammonia down there; it affects the paint.

245. Who calls it ammonia?

A. The men around the works always call it ammoniacal liquor; it is pumped out of the drips, kind of a spirits of oil that comes off the water.

246. You have stated that a condenser would last 50 years,—how do you know?

A. There is no deterioration upon the wrought iron, that is if there has none taken place in the 20 or 22 years of my experience you might say it is practically nil in 100 years.

247. Why?

Ans. In 22 years it would show some change; the external part is protected by paint and when you scrape that paint off the iron is just the same as when it left the mold.

248. Do you mean to say that a condenser that was placed in a new plant 7 or 8 years ago would not show deterioration today?

A. Not on the inside.

249. Do you mean to say it would not on the outside?

A. Not where it is attended to and painted.

250. How frequently would you have to paint it?

A. Once every year or sometimes once in two years is enough; it depends on the moisture and conditions around the place.

251. How much of your time did you spend on street work laying street mains and service pipe?

A. That I could not tell, I was taken up town so frequently to do that, sometimes for two or three days at a stretch, but I had
1312 the work to look after all the same.

252. About what portion of your time did you spend in that establishment?

A. Well it would be probably about 1/5 or 1/6 of the time taken altogether.

253. In the laying of street mains and services, what work did you perform?

A. Generally connecting the pipes with the iron, running the lead, even caulking up, setting meters, and everything that might be required, and giving attention to the order book and complaints.

254. Who repaired the meters at your plant?

A. I repaired them for several years, then I learned a young man how to do it and I was relieved of the responsibility and did not have any more to do of that work.

255. How long did you do that work?

A. For four or five years I would go up there every month once a month for two or three or four days or portions of the time.

256. How long since did you quit doing that?

A. I do not think I have done any of it for the last 15 years.

257. How long had you been working for the old gas company before you commenced to repair meters?

A. I hardly know but I must have been there about 2 or 3 years before I commenced to repair meters.

258. You stated that the first work you did when you came to the Peoria Gas Light & Coke Co. was to take off the old roof and put on a new one—was that on the old retort house that was abandoned?

Ans. Yes sir.

259. What character of a new roof did you put on?

A. The new roof was slate but all I done was to take off
1313 the old roof and prepare it to support the slate, I did not put the slate roof on.

260. How long did that slate roof last?

A. I guess it was taken off the other day.

261. What was its condition?

A. I don't know, I was not down there; it was damaged considerably by a hail storm some years ago and never was repaired much. It was punctured full of holes but that did not make much difference for they wanted air in there and a little water did not hurt. Slate is not much good after it comes off a retort house, as it is af-

fected a little by the alternate heats; it has a tendency to melt a portion of it, dissolve the slate, crumble it where it comes in contact with the heats.

262. Did anything else affect the slate but the heat?

A. I guess not.

263. Do any sulphurous fumes arise about a gas plant?

A. That which rises up there goes up wet and I don't think it affects the slate very much but the changes of atmosphere I think is responsible for it, for where it is open and exposed to the elements alone with only oxygen in the air deterioration takes place.

764. Will you answer the question whether any sulphurous fumes rise to the roof of a retort house?

A. There is bound to be some arising from the fuel when the water is turned on the coke when it is drawn.

265. When they are charging the retorts, how is it?

A. There is a crude smoke comes out then but it don't last long.

266. There is sulphur in all those matters, is there not, both from quenching the coke and charging the retorts?

A. There is more from the fuel than there is from the
1314 smoke in the first charge; in the Pittsburg coal there is not much sulphur comes out but, of course, some does.

267. Is there not a large amount of sulphurous fumes arising from the quenching of coke?

A. There is from the quenching of coke; there is not a great deal of sulphur from the Youghehenny coal but there is some.

268. Does the sulphur fumes affect the iron about a gas plant?

A. Yes, it affects the iron wherever it comes in contact with it.

269. More than about an ordinary manufacturing plant?

A. I don't know, there is very little sulphur in some of the ordinary manufacturing plants; I don't know where the sulphur comes in about some of them.

270. There is none about the ordinary manufacturing plant, is there?

Ans. They generally burn coal under the boilers and some generally is carried up in the smoke; as you go along the street you can smell it.

271. On direct examination you stated the sulphuretted hydrogen affected the holder; in what manner does it affect the holder?

A. Iron has an affinity for it and absorbes it and it acts upon it in the form of rust and eats and cuts it—corrodes it. The action upon iron soon eats it up—takes the life out of it.

272. Did you ever work in any other gas plant except in the old Peoria Gas Light & Coke Co.'s plant?

A. I worked a couple of months in the Cincinnati plant assisting in putting up purifying boxes but I was a mere boy at the time.

274. How long was that before you came to the Peoria plant?

A. I would not presume to say; I was also working in a gas plant when I was putting up holders for the firm I spoke of.

275. How long before you came to Peoria was it that you worked this two or three months you speak of in the Cincinnati plant?

1315

A. That was along about 1856, I guess, or previous to that; it was a long while ago.

Re-direct interrogatories by Mr. TICHENOR:

1. What was the real cause of this engine working badly at the time you went there, as you have testified?

A. The valve motion was not properly adjusted and the engine and steam was laboring against itself.

2. That was due to improper mechanical attention?

A. Yes sir, 45 pounds of steam would hardly turn the wheel but after I set the wheel and got it in position again, after they had been monkeying with it several months in that way, the engine run with 10 pounds of steam.

3. Did I understand you to say on cross examination that the exhauster bed was made with reference to the adjustment of a special engine?

Ans. Yes sir.

4. That was the reason why you could not mechanically use any other engine?

A. Yes sir, there was a continuous shaft there coupled with the coupler and the engine was made of a certain pattern and made for that special purpose.

5. And it was made with special reference to the location of the driving shaft in the exhauster?

A. Exactly, built right upon that bed.

6. Do you know why the portions of the gas plant to which you have referred were replaced about 1886 or whenever it was done?

A. It was done through necessity to keep up with the consumption or demand; the works were too small in capacity to supply the demand; we increased from 10 inches to 16 inches in the mains around the works and in the different pipes, the inlet and outlet to the exhauster, and then out of the works into the city on Adams street as far as Main street the pipes were too small and we could not get the pressure or volume of gas to pass through which created a back pressure upon the purifying boxes and we enlarged that pipe too.

1316

7. Is the exhauster a necessary part of an operating gas plant?

A. Yes sir, it is necessary to counteract the pressure from the holder and relieve the retorts from the pressure of the holder.

8. The exhauster works against the holder and away from the retorts?

A. Yes sir, away from the retorts and against the holder.

9. In your cross examination you referred to two Westinghouse engines installed in connection with the water gas plant—were those placed there at the time of the installation of the plant?

A. No, there was one placed there which was a second hand engine palmed off on us; it was old style make and when we had to replace that the Westinghouse Company wanted to take it back and give us a new one in exchange for it but we bought a second one and kept the other as a duplicate in case anything might happen to one, as we could put it on the same bed without trouble; we were in a pinch at the time; water gas had to be made and the old engine was all we had to put in there, gas had to be made to keep the consumption up.

10. Were those the regular style of Westinghouse high separator engines made at the time?

A. The two we got there were the improved style, high separator engines.

11. Vertical?

Ans. The engines were vertical but the crank horizontal.

1317 12. Is it not true that any and all machinery, no matter for what purpose it is used, demands some attention all the time in order to keep it at its maximum efficiency?

Ans. Yes sir.

13. And that is true of engines as well as other machinery, is it not?

A. Yes, to avoid against accidents, etc., it has to receive constant attention.

14. That is true no matter where the machinery is used?

A. Yes sir.

15. Or any mechanical appliance?

A. Yes sir, it is nothing unusual to hear pieces of machinery calling to the engineer for oil—the shafting creaking, etc.

16. What was the reason for changing the holder, to which you have referred, from a single to a double lift?

A. To increase the capacity of the holder without the additional cost of building a tank and at the same time utilizing the old one.

17. State whether or not the old holder was used except in-so-far as it became necessary to modify it to attach the second lift.

A. The old holder was used in its entirety with a sheet added.

18. Why was that sheet added?

A. The lower sheet must be heavier than the ordinary sheet used for a single lift at the bottom and they had to put on that heavy sheet there and then put a cup sheet to that; the holder was made 2 feet deeper than it originally was and the wall was raised two feet around the tank.

19. Does the second lift of a holder carry any weight except its own when in actual operation?

A. It adds to the weight on the first lift; when the holder commences to cut it puts on more pressure; the moment it starts

1318 to lift the other section it puts on more pressure; it makes quite a difference; it is not usually as heavy as the upper section but it makes quite a difference.

20. That first lift is carried by the second lift suspended from the second lift?

Ans. Yes sir, the first lift might be 4½ and the second lift might be 5¾ or nearly 6 inches water pressure; it is required sometimes according to the location of the city to make a holder to get the desired pressure.

21. Is there any way by which the metal work about the buildings of a gas plant can be protected against the affect of sulphuretted hydrogen?

A. It is pretty hard to overcome the effect of sulphuretted hydrogen even when you paint frequently; it colors the paint and soon kills it, whether it could be painted often enough or not I hardly know; you could not protect the interior of the cover of a purifying box by anything and the outside material if the sulphuretted hydrogen escapes it will get in the iron in places and will eat it.

22. That is due to the chemical affinity of the iron for the sulphuretted hydrogen?

Ans. Yes sir.

23. It is an oxidation is it?

Ans. Yes sir.

24. Do you know when Thomas Coffey first came to Peoria of your own knowledge?

A. I could not say exactly what year it was.

25. Was it before you came here or subsequently?

A. It was long after I came here; we were then laying a main on Franklin street, a new main up Franklin street, and I was out laying the pipe at the time, but I forget what year it was.

26. Do you know whether Thomas Coffey had a technical knowledge of the gas industries at the time he came to Peoria?

A. Whatever technical knowledge he got he had it from
1319 the book; he has no practical knowledge; he was never presumed to have any practical knowledge but he had book knowledge.

27. What did he do in the company up to the time Peter Coffey became incapacitated?

A. He was president for a time and he was connected more with the electric light plant.

28. What work, if any, did he do in the Peoria Gas Light & Coke Co.?

A. He never done anything except to fill the position of a director, but during Peter Coffey's spells of sickness when he went away—twice he went away—Thomas acted as superintendent in his absence for a short time.

29. Did he spend a portion of his time at the works?

A. Yes, a portion of his time would be down at the works; when he was acting superintendent while his brother was away in California, he was down there pretty near every day.

30. When his brother was here and on duty, did Thomas Coffey also spend part of his time at the works?

A. He was doing nothing but he would come down there every ay or so; he was finally appointed president.

Re-cross interrogatories by Mr. IRWIN:

1. Explain what you mean by a double lift holder?
A. That is what they call a telescope, having one section outside the other like a telescope; it slides through and when the first ction is full it cups and the second section is lifted and goes on up to the air.
2. Why do they construct what is called a double lift holder?
A. To increase the capacity, I suppose, at the least nominal ex- ense.
3. Are not they frequently constructed for the purpose of cover- ing a leaky holder?
320 A. No. Suppose you could not go any deeper than 20 feet with the tank and build a one lift holder and then they want make a telescope holder, they do not need to build any deeper to the ground, they build up into the air as far as they want; you n make four lifts in a telescope holder.
4. Is not such a holder also made for the purpose that if one leaks e upper one will catch the leak?
Ans. No.
5. Did you know Thomas Coffey before he came to Peoria?
A. Slightly acquainted with him but not personally.
6. How long had you known him?
A. My first acquaintance with him was about 1878.
7. Is it not a fact that Thomas Coffey worked in a gas plant at elleville long before he came to Peoria to reside?
A. Not that I know of; he was in business down there in the laster and sand business, if I must tell what I don't know except om rumor, but he was not in the gas business—he told me himself.
8. I am not asking for what he told you, I asked you if — was ot the fact?
Ans. I never was in Belleville.

321 E. W. EUSTIS, called on behalf of the defendant, being first duly sworn, deposes and says.

Direct interrogatories by Mr. TICHENOR:

1. State your name and place of residence?
A. E. W. Eustis; #317 California avenue, Peoria, Illinois.
2. What is your business?
A. Superintendent of the manufacturing department of the Peoria as & Electric Company.
3. How long have you been engaged in a similar line of work?
A. Well, I have done it about 25 years off and on between water as and coal gas.

4. Have you a tech-inal knowledge of the manufacture of illuminating gas from coal?

A. Slightly, not very much; mostly practical work, enough so I can handle it though.

5. Have you had training in chemistry?

A. Nothing only what I have studied up myself.

6. How long have you been occupied in the position to which you have referred with the Peoria Gas & Electric Company?

A. I have been with them about 16 months.

7. With what company, or companies, had you been associated in a similar capacity, if any, prior to that time?

A. I was with the Peoples' Gas Light & Coke Co., of Rutland, Vt. then went to work for the Chicago Gas Light & Coke Co., at Chicago; I was with that company about 7 years before I came here.

8. How long were you at Rutland, Vt.?

Ans. About 15 years.

9. Were your duties during all that time substantially the same as they are here?

A. No sir; first I worked around the plant until the last 7 or 8 years; then I was superintendent of the manufacturing.

10. About what was the daily output of the Rutland plant?

A. About 38,000 cubic feet a day.

1322 11. Have you ever had any experience in the construction of gas plants?

Ans. No, I never did any construction work.

12. Have you ever had charge of the chemical department of a gas plant?

Ans. No, I worked as a chemist though for a couple of years in Chicago as an assistant.

13. When you left the Peoples' Gas Light & Coke Co., in Chicago you came directly to Peoria, did you?

Ans. Yes sir;

14. Through whom were your negotiations carried on which terminated in your becoming associated with the Peoria Company?

Objected to as incompetent and immaterial.

A. Why, Mr. Little.

15. That is the same Mr. Little now interested in the company?

A. Yes sir; he came to Chicago to where I was, offered me the position and I accepted it.

16. Had you previously had any acquaintance with him?

A. No, not any.

17. What are your actual duties as superintendent of the manufacturing department of your company, and what have you actually done since you have been here?

Objected to as incompetent, immaterial and irrelevant.

The MASTER: I do not see the materiality of that.

Mr. TICHENOR: I would like to have the witness answer.
The MASTER: He may answer subject to the objection.

A. My duties are to look after the plant, keep it running, make any improvements which I can see it will pay to make, look after the men, see they get fair results and one thing and another.

18. You follow the results, do you, from day to day?

Ans. Yes.

19. In those classes of the work are you accountable to any other person connected with the company, or is your power and authority absolute at the works?

Ans. Yes sir; it is.

20. You do as you please in those matters?

Ans. Yes sir;

21. Are you familiar with the territory covered by your 1323 system in Peoria?

A. No, I have never gone over it very thoroughly for the reason I do not have anything to do with the distribution.

22. Who is in charge of that department?

Ans. Mr. Robb.

23. How long has he occupied that position?

A. About 18 months I guess.

24. Mr. Little has been connected with the company during the entire time covered by your service there has he not?

Ans. Yes sir.

25. State whether or not he spends a portion of his time at the manufacturing plant?

Objected to as immaterial.

The MASTER: I do not see the materiality of it but the witness may answer subject to the objection.

A. He comes down may be once a week, sometimes twice possibly; sometimes it will be two weeks he is not there.

26. Are there any special duties, or any particular lines of work which are in charge of Mr. Little at the manufacturing plant?

Objected to as immaterial.

A. Well, anything in the line of construction work, or anything in regard to new apparatus, or anything like that I would consult him with regard to that.

27. But in your regular operations, is there any particular thing of which he has charge, and which he takes care of?

A. Of course, he is supposed to have charge over me.

28. That is, over the entire system?

A. Yes, street and everything.

29. Have you known, during the time you have been employed in the capacity mentioned, the daily output of your company?

Objected to as immaterial unless it is confined to the 1st, day of September 1901.

The MASTER: The witness may answer subject to the objection.

Mr. IRWIN: I want to instruct the witness as attorney for
1324 the complainant, that he has no right to state what the output of complainant's plant is, or the business that has been done by that plant since the 1st, day of September 1901. I will state now to counsel for defendant, that is as far as we propose to open up our books at the present time. We have given you four months prior to the passage of this ordinance and one year after we commenced the operation of the plant, we have thrown open everything to you and we will now leave it to the court whether we are to be compelled to go any further before we will submit to it.

The MASTER: It is in evidence in this case upon the part of the complainant that as the consumption increases the gas can be correspondingly sold at a less rate with a profit to the producer. I think the inquiry is competent and the witness may answer the question.

Mr. IRWIN: We will adhere to the position I have announced. Of course, we will have to instruct the witness, in behalf of the complainant company, that he has no right to give the details of the business of that company after the 1st, of September 1901, the date at which we made the proof.

The MASTER: What is the date of the passage of this ordinance?

Mr. MANSFIELD: September 4, 1900.

The MASTER: I think the witness may answer the question.

The WITNESS: The daily output—Interrupted—

Mr. IRWIN: Wait a minute. In behalf of the complainant company I instruct you, you have no right to give any details of the output, or business of the company, subsequent to the 1st, of September 1901, and as to that you will have to take your chances if you answer on it. I will say to counsel for defendant right now, that we are willing to submit that matter to the court at any time they desire.

The MASTER: It may be sufficient for the purpose of the inquiry for the witness to answer up to the time you make no
1325 objection Mr. Irwin?

Mr. IRWIN: Yes sir. Our business has been and is an open book up to that date, but we propose to call a halt there; that is as far as we went and we do not propose to permit counsel for defendant to go any further if we can help it because there will be no end to it if this investigation keeps on.

The MASTER: The inquiry really is, whether this is a reasonable ordinance and that question will be determined, not on any date, but whether it is now as disclosed by the evidence in the record.

Mr. IRWIN: It will have to date back to the time this injunction was asked. I do not agree with the master, an ordinance might be valid to-day that was not valid at that time.

The MASTER: Let me suggest to you, if it is an exercise of police power and if was valid at the time its operation is sought to be pro-

hibited, is it a material inquiry whether it was valid at the time it was adopted.

Mr. IRWIN: Certainly it is, because that was the time we asked for this injunction and we have given a bond and if it is valid at that time we have got to refund and we cannot try the case on facts two or three years following in order to sustain an injunction that happened two or three years ago. Facts and circumstances may be entirely different. Any fact that pertains to the business of this company for the four months prior to the passage of the ordinance and for one year following the passage of the ordinance, the business of the complainant is an open book for investigation and has been since the commencement of the taking of the proof in this case, but we feel it is unfair to the company and unfair to those interested in it, to continuously make the business of this company an open book for the investigation of the defendant to sustain an injunction granted about the time of the passage of the ordinance in September, 1900.

Mr. TICHENOR: Why don't you stop at October 1, 1901?

1326 Mr. IRWIN: Because we give you the whole business of the company prior to the time of the passage of the ordinance and for one year following that time so it takes in all the conditions of the plant and the condition of the business during all seasons.

The MASTER: I am inclined to take a different view of the matter. Let the witness go on and answer up to the 1st, of September, 1901, and I will make a subsequent ruling as to any further inquiry.

A. Yes sir; I know the sendout by our station meter, but I could not tell you the actual gas sold by the meters; I could not tell that because there is a leakage from that, but we send out about 130.000 to 160.000 cubic feet a day; of course there probably would be somewhere in the neighborhood of 8, 10 or 12½ % leakage.

30. What was the daily ourput, as nearly as you can remember it, when you first became associated with the complainant company 16 months ago?

Ans. It was about the same thing.

31. What was it up to the 1st, of September 1901?

A. It run a little low just about that time—probably about 130.000 or 140.000 cubic feet.

32. What was your daily output if you remember substantially in the month of January 1901?

A. Probably 160.000 to 170.000 cubic feet per day—no, it did not run that much—about 130.000 on the average.

33. You are operating a coal gas plant alone—you have no water gas plant?

Ans. We have no water gas plant.

34. Do those figures which you have given represent your entire manufacture from day to day?

Ans. Yes sir;

35. What was your daily output during the month of September 1901?

(Objected to as incompetent and immaterial.)

The MASTER: That relates to the time covered by your previous objection, Mr. Irwin?

Mr. IRWIN: Yes sir; and I desire to instruct the witness he has no right to give any of the details of the business of the com-
1327 plainant company after September 1, 1901.

I now instruct you, Mr. Eustis, that unless you propose to answer these questions with reference to the details and business of the complainant company subsequent to September 1, 1901, over my objections and protest, your answer should be, "On the advice of counsel for complainant I refuse to answer the question."

Adjourned by agreement until Thursday, May 1, 1902, at 2 o'clock p. m.

United States circuit court room, Government building.

PEORIA, ILLINOIS,
THURSDAY, *May* 1, 1902—2 o'clock p. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin, Mr. E. C. Ritcher and Mr. W. T. Abbott, appearing for complainant. Mr. Henry Mansfield and Mr. F. H. Tichenor appearing for the defendant.

The witness, Mr. E. W. Eustis, who was on the witness stand at the adjournment on Tuesday, again took the stand and the stenographer read over his testimony that had been given.

Mr. RITCHER: As indicated by the minutes of the stenographer we are evidently up against a question which we deem of considerable importance and in our view of it it becomes our duty not to let the testimony go in unless the court so instructs. It seems to me instead of wasting time and sparring here over something which, so far as the facts are concerned we probably all have our own opinion about and know about, that this being a question of law it would be proper to make up an issue and go to the court on it. We do not desire to delay the hearing by interposing objections to fifty questions. We think the whole matter ought to be taken up to the court.

The MASTER: I agree with counsel in that respect, the
1328 record, however, at the present time is not in exactly the right shape to present to the court because there has been no ruling by the master on this question. Do you renew your question, Mr. Tichenor, as to the output in the month of September 1901?

Mr. TICHENOR: Yes sir; and I desire to say, if the master please, as we have intimated before—perhaps stated positively—we have a right after the proofs are all in to file an amended answer and, if the situation is such as to make it proper, to file a supplemental answer. That course we propose to pursue provided the situation

is such as to require it and probably it will be, so far as pertains to matters occurring after the filing of our previous answer.

Mr. RITCHER: While the statement of counsel is of course proper, the filing of an amended answer or supplemental answer must be based upon something growing out of the case pertaining to the issues as they then stood.

The MASTER: I desire to say that since our last adjournment I have made what effort I could to determine the right course to take in this matter and have come to this conclusion: That if the answer is amended this evidence would be clearly competent. I also find the rule to be, and it is said to be fundamental, that the evidence must be confined to the issues made by the pleadings. This is a rule applicable to equity proceedings as well as proceedings at law. Now, the issue in this case is, as to the reasonableness of this ordinance fixing the maximum rate to be charged for gas. In my opinion, when this record is submitted to the chancellor for final determination as to whether or not this temporary restraining order shall be made perpetual or not, the inquiry will be directed as to what the conditions then are as to the reasonableness of the maximum rate fixed by the ordinance as disclosed by the record, not as to what they may have been at the time the bill was filed. That being true, I am of the opinion, especially in view of the stipulation of counsel, for the defendant, that it is competent evidence
1329 for the defendant to go into as to the output since September 1, 1901, and the master directs the witness to answer the question.

(Mr. TICHENOR:)

35. I would like to have your answer, Mr. Eustis?

A. I consider that a confidential matter between me and the company and I wish not to answer that question under advice of counsel.

36. Then you refuse to answer do you?

A. Yes sir; under advice of counsel.

37. Is the advice of counsel your only reason for refusing to answer?

A. Well, I don't know why I should answer. I understand the case was to September 1, 1901—Interrupted——

(The MASTER:)

38. The question is as to whether or not the reason you refuse to answer is because counsel for complainant has advised you not to do so?

A. Well, I consider it confidential between me and the company

(Mr. TICHENOR:)

39. That is not a matter for you to decide as I understand the ruling of the master?

The MASTER: No, it is not a matter for you to decide.

Mr. RITCHER: He says he will refuse to answer unless advised to do so by counsel and counsel will not advise him to answer.

(Mr. TICHENOR:)

40. Why do you refuse to answer the question that has been propounded to you?

The MASTER: I do not think I would press that question any further, Mr. Tichenor. I think the record is clearly sufficient to get a ruling on the point in controversy as the record now stands. The record of Mr. Ritcher's last direction to the witness is clearly sufficient. I would not waste any more time on it.

Do you desire to continue with the witness on some other line of inquiry?

Mr. TICHENOR: No sir; our examination of this witness pertains almost entirely to that line of examination.

1330 The MASTER: Well, call another witness then?

Mr. TICHENOR: This is the only witness we have ready; we expected to occupy the whole afternoon with him.

The MASTER: I think you ought to have other witnesses present. You certainly ought to have known the master could not compel this witness to answer this question.

Mr. TICHENOR: Well, that is the situation we are in.

After some discussion the hearing was adjourned by the master for the purpose of giving counsel an opportunity to submit the question of the competency of the evidence called for to the court, the hearing to be resumed at the call of the master.

1331 United States circuit court room, Government building.

PEORIA, ILLINOIS,
MONDAY, *May 5th*, 1892—10 o'clock a. m.

Parties met pursuant to the call of the special commissioner.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin, Mr. E. C. Ritcher and Mr. W. T. Abbott appearing for complainant. Mr. Henry Mansfield and Mr. F. H. Tichenor appearing for defendant.

Direct examination of E. W. EUSTACE resumed by Mr. Tichenor:

41. What books are kept at the works which pertain to the manufacturing plant of complainant company—I am referring now to those with respect to keeping records of material, labor, production, output of gas and other matters of that character?

A. We keep a manufacturing book that shows the station meters, the amount of coal used every day, coal in stock, gas made per ton

of coal, made per retort, tar made, ammoniacal liquor made, coke, candle power, etc. We have a time book for the labor that runs for two weeks which we turn into the office.

42. How is that labor time kept?

A. It shows how many men are in the retort house at so much per day.

43. That is kept from day to day?

A. Yes, charged up every day.

44. Have you a regular time keeper?

A. Well, we have a store keeper that looks after the time.

45. Who is the store keeper?

Ans. Geo. W. Barker.

46. How long has he held that position with your company?

A. He has been doing that work about a year, but has been with the company about two years, since we started or longer.

47. State whether or not during the time covered by your connection with the company there has been any change in the
1332 method of keeping any of the accounts to which you have referred.

A. No, nothing at all, unless a little difference in the manufacturing book, that is, we might add something to it, that is all.

48. When, with respect to the time of coal consumption, purchases, or use of material, etc., are those items entered in your manufacturing books?

Ans. They show when we receive coal.

49. You charge that in the book at the time of the receipt?

A. Yes sir, but there is no cost price or anything on the coal shown; that is all taken care of at the office.

50. From what source are those quantities so charged or entered obtained—as you receive the coal is it entered on this book?

A. That shows we receive so many thousand pounds, for instance, today.

51. From what source do you get those weights?

A. From our scales.

52. You do your own weighing, do you?

Ans. Yes sir.

53. And are those entries made as soon as the weights are obtained?

Ans. Yes sir.

54. And that is part of Mr. Barker's duty, is it?

Ans. Yes.

55. Do you also keep an account of the consumption of the different kinds of coal used from day to day?

Ans. Yes sir.

56. How many different kinds of coal do you use in the manufacturing plant?

A. We are using only one kind now for gas, that is Youghiogheny; we use mine run sometimes screened for fuel purposes.

57. Coal from the Peoria mines—local mines?

A. Yes sir, about six weeks ago, we run out of coal and could not get any and we used half local coal and half Youghiogheny both for boiler purposes and gas purposes; we could *get* not get the other coal and were down to about 50,000 pounds of Youghiogheny
1333 and we used the local coal to help us out until we could receive some coal.

58. Have you at any time since your connection with the company used any of the Illinois coal for gas purposes other than you have stated?

A. We used some, I think it was a year ago last winter, we tried it and it was a failure; we tried it with our benches but we could not get the heat from it on account of so much sulphur in the coal and we gave it up.

59. When is your gas coal consumption from day to day entered in this manufacturing book to which you have referred?

A. It is entered twice every day.

60. And has that been your practice during the period covered by your connection with the company?

A. Yes sir, always, but we find that it is not absolutely correct for the reason at the end of two years' run down there we found a shrinkage in our coal of about 4 per cent.; it is not correct because sometimes it overweighs a little and sometimes underweighs; it varies a little.

61. When you say a shrinkage of 4 %, do you mean on the basis of the weights made by yourself at the time of the receipt of the coal and again your weights at the time of consumption?

A. Yes, when it is all consumed; of course, it may be possible—you know each man weighs his own coal—and he might not be particular with it and give us more weight than we ought to have.

62. Who does the weighing as the coal is received and what has been the rule during your connection with the company?

A. Mr. Barker does that.

63. Who does the weighing at the time of consumption?

A. Each man does his own weighing in the retort house.

64. How many men are ordinarily employed in the retort house?

1334 A. We vary with the amount of gas made.

65. How many are employed at the present time?

A. There are 18 men including both shifts.

66. You employ about 9 on each shift, do you?

Ans. Yes sir.

67. With reference to the work they perform in the retort house, how is it divided among those nine men?

A. Each man has a bench to operate on the floor; he does his own drawing and charging, that is, they work in pairs and we have three coke men and the men working the coal that is included in the 12 hours' shift.

68. Do those men charge the retorts and draw the coke out entirely?

A. They look after the fire, draw their coke and charge and look after their bench.

69. Who supplies those men with coal?

A. They go out and draw their own coal buggy in but it is loaded for them, they just run it in on the scales and weigh it.

70. Each retort man weighs his own coal in?

A. Yes and there is where a mistake is liable to come in the weighing one way or the other.

71. Does he also keep a record of that?

A. He merely puts on a sheet the amount of coal he puts into a charge, whether 900 pounds in three retorts or sometimes 1,000.

72. What does he do with that?

A. It is turned in to us at the office.

73. Those slips go to Mr. Barker, do they?

Ans. Yes sir.

74. How frequently?

A. Every morning he gets them for the last 24 hours' work.

75. How are your shifts divided with respect to the 24 hours?

A. In 12 hour shifts but they work about 10 hours, that
1335 is, they are on duty 10 hours; they probably work about 15 or 20 minutes to the hour.

76. How is the division made as to time—when do you change shifts in the 24 hours?

A. They go on at 6 o'clock and they get through about half past 4 or 5; they work about 15 minutes in an hour, and it is hard to get men even to do that.

77. That is due to the extreme heat in the retort house?

A. Yes sir, and we are short now this hot weather; we cannot get men to do the work in this hot weather; I figure we should keep 6 or 7 men extra for we cannot keep men in there.

78. That is the same in every retort house, I suppose?

A. It is unless they have drawing and charging machines, that does away with that.

79. What if any account is kept at the works of the daily gas production?

A. We keep an account of it showing the gas made every 24 hours and sent out.

80. Do you take that every 12 hours?

A. Yes sir, at 6 o'clock in the morning and 6 o'clock in the evening.

81. Are those items entered in this manufacturing book to which you have referred?

Ans. Yes sir.

82. Who takes the register and who makes the record?

A. The engineer takes the station meter and the holder, Mr. Barker makes out the record.

83. Who do you mean by the engineer?

A. The man that has charge of the boilers and the engines.

84. You do not employ a gas engineer?

Ans. No sir.

85. Do you know when the engineer makes a report with respect to the time he actually takes the statement?

1336 A. We have a book from 6 a. m. to 6 p. m. and he is supposed to take it.

86. That book goes to Mr. Barker, does it?

Ans. Yes sir.

87. How many station meters has your company?

A. The Peoria Gas & Electric Co. has one.

88. Is that all it has ever had?

Ans. Yes sir.

89. Does all the gas that your company manufactures pass through that meter?

A. All it manufactures for itself, yes sir.

90. Is there any gas which your company manufactures that does not go through that station meter?

A. Yes sir, they are delivering gas to the Peoria Gas Light & Coke Co.

91. How is that charged?

Ans. At the station meter.

92. Whose?

Ans. Their own.

93. Which one do you mean?

A. The Peoria Gas Light & Coke Co.'s meter.

94. Who has charge of that station meter?

A. We take that station meter the same as our own.

95. Is that station meter of the same make as your own?

A. Yes sir.

96. At what time do you take that station meter?

A. At 6 o'clock in the morning and 6 in the evening.

97. What regulates the quantity of gas which you deliver through the station meter belonging to the Peoria Gas Light & Coke Co.—what forms the basis for the quantity you deliver through that meter?

A. Well, the same as we manufacture it—enough to keep their holders high.

98. You depend do you upon the quantity in their holders?

A. Yes sir, that is the consumption.

1337 99. How long have you been delivering gas to the Peoria Gas Light and Coke Co. in the manner you have described?

A. I think we commenced along about the first of November 1901—it might be two or three or four days earlier than that.

100. Will your books show exactly when you commenced that delivery?

Ans. Yes sir.

101. What account is kept of that gas, if you know?

A. Well, all we do, I turn the account of that in to Mr. Little; we also send a statement to the old company every day.

102. Is that entered on your books at the works at all?

A. We just keep an account of the gas delivered.

103. Is that entered on this book you call the manufacturing book?

A. No, sir, we keep a separate book for that.

104. Is it a similar book?

Ans. Yes sir.

105. Have you more than one book at the works in which you keep the accounts of the various items concerning which you have testified, that is, your coal, labor, gas, etc.?

A. No sir, we have only one book, the book I speak about, which merely shows the gas delivered in the send out and the stock on hand of the old company.

106. That is a separate book?

Ans. Yes.

107. The gas which goes into your own holder is in the same book with your material, etc.?

Ans. Yes sir.

108. Is that book the only book you keep at the works for those purposes?

Ans. Yes sir; all we have, as I say, is a book showing the station meter from 6 a. m. to 6 p. m. and also the height of the holders.

109. Are you speaking now of your own company?

Ans. Yes sir.

110. That is separate from the stock account?

A. Yes, it is merely an account of the station meter.

1338 111. Who takes the station meter of the Peoria Gas Light & Coke Co.?

A. Our engineer and boiler man.

112. The same man?

Ans. Yes sir.

113. Does Mr. Barker make a record of that?

Ans. Yes sir.

114. Has there been any change in the method of keeping the quantity of gas furnished to the Peoria Gas Light & Coke Co. during the time that has elapsed si-ce you began that service?

A. No sir.

115. Who is your engineer that has had charge of this service during the time to which you have referred?

A. Well, we have had three different men, one man named Mike Hart, another Charles Victor, and a man named Whalen, I cannot think of his first name; they are around the yard reading the station meter and when one leaves and we put another in we just instruct them how to read it.

116. What, if anything, have you to do with those gas accounts after they are entered and transmitted to the up town office, as you have stated?

Ans. I do not have anything to do with them; the most I am looking after is to see about how we run.

117. State whether or not you keep a separate account of the results of each retort man?

A. No, we do not; we could not do that for the reason we would have to read each man's work separate.

118. Then the only knowledge you have is the result for 12 hours and result for 24 hours?

A. Well by going through the house, I can know the result by the different benches and the heats and the coke as it is coming out of the retorts; I can tell pretty quick which one has not got his bench in good shape.

119. In what building of the Peoria Gas Light & Coke Co. is its station meter located?

Ans. At the office at the works.

1339 120. In whose custody is that building?

A. Well we have a key to it and go back and forth to take the station meter.

121. Do you know whether anyone else has any key to it or not?

A. No, not that I know of.

122. Do you know who has charge of the remainder of the manufacturing plant of the Peoria Gas Light & Coke Co.?

A. Mr. McKinley told me he would like to have me act as custodian of the property.

123. That was a verbal statement, was it, not in writing?

A. Not in writing, no.

124. How long ago was that?

A. About the time they shut down.

125. And you have had charge of it since that time?

A. I have kind of looked after the property to see that nothing was destroyed.

124. What duties do you perform in and about the manufacturing plant of the Peoria Gas Light & Coke Co.?

A. We have no duties outside of looking out for the amount of gas delivered.

127. Who looks after the gas holders and the water supply in cisterns?

A. There is nothing to look after only a pump running there; every 24 hours our engineer oils it or once in 12 hours.

128. What does that run for?

A. It is run for one of their holders; there is a leak in it and we have to supply water to keep it from leaking out.

129. Where is that pump located?

A. In the engine room in the basement.

130. Of the works of the complainant company?

A. Yes sir.

1340 131. How far is that holder, which you continually supply with water, from the pump?

Ans. Probably 40 or 50 feet.

132. This holder, to which you are now referring, is the largest holder on the old company's ground, is it not?

A. No, it is next to the largest; it is the holder that sets in the middle there.

133. Is it not also necessary to supply water to the tank of the large holder?

A. No, we have not put any water in it.

134. Have you any connections with the water supply for the other holder?

A. There is a connection there but we have never used it.

135. Is that connection also with this same pump to which you have referred?

Ans. No sir, it is not; there is a pump in the water gas plant they could run from the river but they have never used it.

136. Where is this water gas plant located?

A. In the yard there on the old company's ground.

137. Is there also a city water connection to either of those large holders on the old company's ground?

A. Not that I know of.

138. Is it not true that at certain seasons of the year, and particularly in times of snow storms, it is necessary to give the holders some special attention?

A. The only time it would be necessary would be in a heavy storm so the top of the holder would get a heavy load of snow on it, it would be liable to make it leak.

139. Is it not also liable to jam in the guides?

A. A heavy sleet storm might do that.

140. And at such times it is necessary to guard them carefully?

A. Yes, but we have never had any trouble in that line
1341 with sleet or anything except a heavy snow storm.

141. Does your authority at the works of the Peoria Gas Light & Coke Co. extend over the holders as well as the parts to which you have particularly referred?

A. Yes sir, we have to take care of the amount of gas delivered.

142. Do you not also have to see that the holders are operating properly. In other words, use the same care with respect to them that you do with respect to your own holder?

A. Yes, we would have to do the same.

143. Where is the connection between your manufacturing plant and the delivery to the Peoria Gas Light & Coke Co.?

A. It runs right along back of the holder between the coal sheds.

144. About how great a distance?

A. I could not tell you exactly, it might be 400 or 500 feet.

145. From what point in your works does that main—if that is the proper term for it—originate?

A. It comes from the purifying house just at the end of the boxes.

146. Is there any connection between that main and the one that runs to your own holder?

Ans. No.

147. Do you draw from the same source of supply to fill your holder and theirs also?

A. Thier gas comes off from the outlet of the boxes and we also take ours but they are both metered separately.

148. Have you a separate purifying box—Interrupted.

Mr. RITCHER: Complainant admits it all comes out of the same purifying boxes.

149. When was this main to the station meter of the Peoria Gas Light & Coke Co. put in?

1342 A. In October, 1901, on or about the 20th, I think.

150. What, if anything, did you have to do with placing it there?

Ans. Why, I didn't have anything to do with it.

151. The work was not under your supervision?

Ans. No.

152. Who put it in?

Ans. Mr. Robb.

153. By what company was he employed at the time it was put in?

A. By the Peoria Gas & Electric Co.

154. He acted as superintendent did he in its construction?

A. Yes sir.

155. Who furnished the material and labor that went into it?

A. I don't know about that, I could not tell.

156. Were there any other men known to be in your employment that worked upon that construction at that time?

A. No there was not.

157. Would your accounts at the works show whether you furnished the material and labor or not?

A. I don't think they would; Mr. Robb would have that.

158. What is Mr. Robb's full name?

Ans. John W. Robb.

159. What is his official connection with your company?

A. He is superintendent of distribution.

160. You know the condition at the present time, do you not, of the manufacturing plant of the Peoria Gas Light & Coke Co.?

A. Yes sir.

161. What is its condition now with respect to being ready for operation or otherwise?

Ans. It would have to be rebuilt.

162. What if any changes have been made in those works since the time you began to furnish gas to the Peoria Gas Light & Coke Co.

A. There has not been any aside of laying that main.

163. What is the condition at the present time of the old retort house?

A. It has depreciated so we could not use it; it would have

1343 to be rebuilt.

163. Where is that located with respect to the railroad ack along in front of the two plants?

A. It is located right along side of our office.

165. Do you know how long it is since that retort house was in use?

A. It was in use up to November—do you mean the old one?

166. Yes?

Ans. Oh, I don't know how long.

167. How many retort houses are there on the grounds of the old company?

Ans. Two.

168. What is the condition of the old retort house at the present time?

Ans. It would have to be rebuilt in order to make any gas there.

170. What has become of the old retorts that were in there?

A. I believe they were sold to Finkelstein.

171. What, if anything, did you have to do with their removal and disposition?

A. Mr. McKinley told me he wanted to get rid of them and for me to tear them down and sell them the best I could.

172. He left that entirely to you?

Ans. Yes sir.

173. Was that instruction entirely verbal?

Ans. Yes.

174. Have you in your possession or control any correspondence whatever from him pertaining to that particular subject matter?

A. No sir.

175. When did you get that instruction?

A. Oh, about a month ago. (I understood they were going to rebuild that house.)

Defendant objects to that part of the foregoing answer enclosed in brackets as not responsive and moves the court to exclude it.

176. What is the present condition of that structure?

A. It is unsafe; it would have to be rebuilt; the roof is
1344 nearly off and the walls are ready to fall over and I am afraid they will fall if not taken down.

177. Do you know at the present time what make of retorts are in the other retort house on the ground of the Peoria Gas Light & Coke Co.?

A. Mr. Bredel put those retorts in.

178. Are those the same make as the ones in your plant?

A. No sir, we have the Parker-Russell.

179. Are they substantially identical in their construction and operation?

A. Largely so except we have what is called the pipe organ flue in the Bredel and we have the box flue which is about the same thing.

180. Do you know when the present stack, the one to which you have just referred, was put into the Peoria Gas Light & Coke Co.'s plant?

A. I could not say, I was not here.

181. Was that retort house in operation when you first became associated with the complainant company?

Ans. Yes sir.

182. What kind of furnaces are used there?

A. Regenerative, the same as ours.

183. Those are the most modern type of regenerative furnaces, are they not?

Ans. Yes sir.

184. How many benches, how many retorts in each bench in the old plant?

A. 6 benches and 9 retorts to a bench.

185. Has any change been made in that stack since you have been employed by the complainant company within your knowledge?

A. No sir.

186. For how long a period of time have benches and furnaces of the kind to which you have just referred in the old company's
1345 plant, been in use?

A. I could not tell you exactly but 10 or 12 years, I guess.

187. Before you came to Peoria, had you had experience with the same kind of furnaces?

A. Not with regenerative furnaces.

188. What advantages has the regenerative furnace over the old type?

A. It has a slight saving of fuel.

189. Do you know whether or not it tends to economy in the manufacture of gas taken as a whole?

A. Not otherwise only in room and in fuel.

190. Then in your judgment the old method is substantially as economical as the new?

Ans. Yes.

191. What experience have you had with the two classes of furnaces in question?

A. We used *two* run benches of 3's.

192. For how many years did you use those?

A. From 2 to 2½, sometimes 18 months.

193. I do not mean that but how much experience in years did you have with furnaces of that kind?

A. Well, I have been around them for about 8 or 10 years. Then we went to making water gas.

194. How long have you had experience with the regenerative type of furnace?

Ans. About two years.

195. Has that experience been entirely in this Peoria plant?

A. Yes.

196. Is the Peoria Gas & Electric Co. now manufacturing and supplying all the gas used by the Peoria Gas Light & Coke Co.?

A. I don't know.

197. How long is it since the manufacturing plant of the Peoria Gas Light & Coke Co. was shut down?

1346 Objected to as already asked and answered.

The MASTER: I think so but the witness may answer this direct question.

A. It was some time along about November 25th, 26th or 27th, 1901, somewhere in there, I don't remember exactly.

198. And up to that time had the old company's plant been manufacturing its own gas supply entirely, so far as you know?

A. Yes sir.

199. How many plants has the Peoria Gas Light & Coke Co. in Peoria?

Ans. Only one that I know of.

200. How many plants has the Peoria Gas & Electric Co.?

A. One gas plant is all I know of.

201. In the department, to which you have referred, do you have the entire control or have you an assistant?

A. I have no assistant.

202. Has that been the fact during all the time you have been connected with complainant company?

A. No, I had an assistant along in 1901, in August, I believe it was—Peley was my assistant.

203. But for some months past, you have had no assistant at all?

A. No sir.

204. You are on duty during the day as a rule, are you?

A. Yes sir; we have a retort house foreman night and day.

205. Do you know what the condition of the remainder of the plant of the Peoria Gas Light & Coke Co. is at the present time outside of the old retort house?

A. Well, their purifying boxes would have to be recovered and the plant would have to be repaired and renewed generally all around.

206. What particular repairs or replacements other than those already specified would be necessary?

1347 A. They would need new pumps all through the plant with the exception of one or two; new piping for steam boilers, all would have to be rebuilt?

207. Are there any boilers in the old company's plant at the present time?

A. There are four boilers.

207. Is there any engine in the old company's plant?

A. Yes, it has three engines.

208. Do you know anything about their condition?

A. I don't know their exact condition.

209. Do you know about the conditions of the water gas plant, of the old company's plant?

A. Well, in my judgment it would need repairing and renewal of the brick work and the like of that.

210. Have you any duties to perform, other than those indicated, with the works of the two companies to which you have referred?

Ans. No sir.

211. Who, if anyone is employed about the manufacturing plant of the Peoria Gas Light & Coke Co. except yourself?

A. I don't know as any one.

212. How frequently during the past 6 or 7 months have you been upon those premises?

A. I might be there some days two or three times and sometimes oftener than that.

213. What compensation, if any, do you get from the Peoria Gas Light & Coke Co. for your services to that company?

Objected to as incompetent and immaterial and calling for the confidential relations between this witness and a company not a party to this suit.

The MASTER: I think it would be competent to show whether or not he gets a compensation but I do not think it would be
1348 competent to show what it is.

214. State whether or not you get any compensation for your services?

(Objected to as incompetent and immaterial.)

A. No, I do not.

215. You understood, did you, that my question refers to your services as described by you for the Peoria Gas Light & Coke Co.?

A. Yes sir; I have not received any salary from the Peoria Gas Light & Coke Co. for those services.

216. Have you any agreement for any salary whatever from that company?

Objected to as incompetent and immaterial and asking the witness to disclose confidential relations between himself and a company not a party to this suit.

A. I have none.

217. Previous to the time you were employed by the Peoria Gas Light & Coke Co., in the capacity to which you have referred, did you have any conversation with Mr. McKinley, or any of the other officers of that company, with respect to that employment?

A. No.

218. Have you had any conversation pertaining to that subject, with any of the officers of your company or any of the people interested in it?

A. In looking after that property?

219. Yes?

Ans. I went to see Mr. Little about it and he said it would be all right so far as he was concerned.

220. Was that before or after Mr. McKinley conversed with you?

A. Afterwards.

221. Was that Mr. Little to whom you refer the Francis W. Little who has testified in this case?

Ans. Yes sir, manager of our company.

222. Is that the only conversation you ever had with him
1349 on that subject?

Ans. Yes sir, that is all.

223. Have you any business, or have you had, during the time covered by your connection with the complainant company, other than in the capacity described for the past two years?

A. I worked for the Peoria Gas Light & Coke Co. for about six months during that time; I left the new company April 5, 1901, and worked for the old company up to November 1, 1901.

224. In what capacity were you employed by the old company during that time?

A. In the same capacity I am with the Peoria Gas & Electric Company.

225. Do you know who took your place in the new company during that period?

Ans. Yes, Mr. Robb.

226. What, if anything have you to do with the street mains?

A. I have not anything to do with it.

227. State whether or not there is any cut-off in the main, to which you have referred, running from your works to the station meter of the Peoria Gas Light & Coke Co.?

A. Yes sir, there is a valve in our meter room.

228. Is that the only cut-off?

A. Well, if they want to cut it off in the old works office they could cut off the inlet to the valve there.

229. That is the regular meter cut-off?

Ans. Yes sir.

230. Is there any cut-off or by-path between the purifying boxes and your own holder?

A. The chief thing is the valve from the meter; we can shut that valve and by-pass it to make repairs to the meter or anything.

230. Is there any cut-off between the purifying boxes and the meter?

A. There is a valve to shut off the box or outlet.

232. So you can entirely cut off the purifying boxes from
1350 the station meter or from the holder?

A. We could not cut off the purifying boxes and make gas but there is a by-path from the meter; there is on every station meter.

233. How many holders of the Peoria Gas Light & Coke Co. are in service at the present time?

A. There is one; you never can run but one at a time.

233. Is that the largest one to which you have referred?

A. Yes sir.

234. Is that the same as yours?

Ans. Just about.

235. What is its capacity?

Ans. 300,000 cubic feet.

236. Is that the only holder on those grounds that has been in service during the time you have been furnishing gas to the old company?

A. If they did not have gas enough in the large holder, they might shut it off and put on the other holder.

237. Do you know, as a matter of fact, whether that has been done?

Ans. That has been done.

238. When and how frequently?

A. Well, it might not be done in a month, then it might be done two or three times a week, depending on the consumption; I don't believe it has been done for the last two or three weeks.

239. During what part of the time since you began to furnish gas to the old company was that done?

A. It might have been done a month ago, it might be two weeks ago, I don't remember exactly.

240. Was it done frequently during the winter months?

A. No, not very frequently; if a dark day came on and we were not manufacturing quite enough, in order to keep that large holder for the evening, we might put on the next holder.

241. Who did that or who had charge of it?

1351 A. The engineer would do that, the same man that reads the station meter.

242. Whose duty was it to see that question was properly taken care of?

Ans. My duty.

243. And you instructed the engineer, did you?

Ans. Yes.

244. Did you receive any instructions in that regard from anybody else?

A. I had instructions from Mr. Little to deliver them gas.

245. But from day to day, as occasion required, you received no instructions to turn gas into the other holder?

A. No, I just used my own judgment.

246. How are the connections between the station meter and those two holders on the old company's ground with respect to shutting off from one and turning on to the other?

A. All you have to do is to open a valve on the holder you want put on to the city, then go and shut the valve you want to take off from the city; there are two valves.

247. When you were delivering gas into the second holder, or the smaller one, as I understand you, would the larger one be entirely shut off from your works?

A. No we would merely open up the outlet to the city, that would back the lighter holder up, fill it up; the street governor would control the pressure back.

248. There is a direct connection between the two holders, is there?

A. Yes, there is a header coming along that connects them together.

249. What is the capacity of this smaller holder to which you refer?

A. I am not certain but think about 250,000 cubic feet or 280,000.

1352 250. When you refer to the capacity of a holder, you mean the quantity it will hold at one time?

Ans. Yes sir.

251. And not the quantity it is capable of distributing in the 24 hours?

Ans. No sir, just the amount of gas it will hold.

252. Where a gas holder has a capacity of 300,000 cubic feet, as I understand complainant company's have, can you supply during 24 hours by distribution a greater quantity than that?

A. Yes sir, we can.

252. How much can you increase your distribution above the actual capacity of your holder?

A. That depends on the hours the gas is burning; if it is all burned in three or four hours we could not increase it very much, probably 25,000 an hour for four hours, but if it was burned steady for the 24 hours we could probably increase it the capacity of the plant, but it is not burned, of course, that way.

253. What effect upon that question has the introduction of gas for fuel purposes had?

A. It has increased the day consumption some; I don't know just how much.

254. During the process of manufacture, is gas being delivered into the holder continually?

Ans. Yes sir.

255. So that the distribution and the delivery into the holder are practically continuous and going on at the same time?

Ans. Yes.

256. Is there any connection between the main, delivering the gas to the holder and the outlet for distribution?

A. Well, we could by-pass the holder and run directly to the city.

257. But, as they are ordinarily constructed, is there any connection?

Ans. No, there is not.

258. The city supply is drawn entirely from the holder as a reservoir?

Ans. Yes sir.

1353 259. During the time that you have had charge of the old company's works, wh-t, if anything, has been done there except under your authority and direction since they shut down?

Objected to as incompetent and immaterial.

A. There has not been anything done outside of starting to tear down that old retort house.

260. Have those old retorts all been removed?

Ans. No.

261. The remainder of the buildings and the plant remain as they were when the plant was shut down?

Ans. Yes sir.

263. What other foreman, if any, has the complainant company other than those to whom you have referred in the manufacturing department?

Ans. Not any.

264. What other foreman, if any, has it in any of the other departments, so far as you know?

A. John Welsh has charge of the street department and Mr. Robb is the superintendent of distribution.

265. Has Mr. Robb also charge of the street work proper?

A. Yes sir.

266. Has he a foreman under him who looks after different gangs?

A. He has several foremen, I believe, but I don't know.

267. Since the time the complainant company began to furnish gas to the Peoria Gas Light & Coke Co., has the service been continuous up to the present time?

Ans. Yes, it has been continuous.

268. Did you have anything to do with the arrangement resulting in the complainant company furnishing gas to the Peoria Gas Light & Coke Co.?

A. Do you mean in the laying out of the work?

269. No, in the preliminary arrangements or business part of it.

A. No.

270. You took no part in the formation of any agreement pertaining to that question?

Ans. No.

1354 271. And you don't know what it is?

Ans. No, I do not.

Cross interrogatories by Mr. ABBOTT:

1. These books which you refer to as being kept by you at the plant are they official records or are the- mere personal memorandums kept by you as a check on the manufacture from day to day?

Objected to as calling for a conclusion and not for facts.

The MASTER: I think so, let the witness state what the books are.

2. For what purpose, if you know, are these books to which you have referred kept at your office?

Objected to same grounds.

A. It is simply as a check so I can see how I am getting out my work, that is all; they are kept for my personal benefit.

3. That is to ascertain, if I understand you, where there are leakages or where the cost of manufacture could be reduced?

A. Yes sir, or anything like that.

4. With reference to compensation for your services as custodian of the manufacturing plant of the Peoria Gas Light & Coke Co. you testified you received no compensation from that company—I presume you mean by that that you receive no personal compensation?

A. Yes since the plant shut down.

5. You don't know whether the Peoria Gas & Electric Co. receives compensation for your services from the Peoria Gas Light & Coke Co. or not?

(Objected to as immaterial and incompetent.)

A. I do not.

GEORGE W. BARKER, called on behalf of defendant, being first duly sworn, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. State your name and residence.

1355 A. Geerge W. Barker, Peoria, Ill.

2. What is your business?

A. I am a clerk for the Peoria Gas & Electric Co.

3. How long have you occupied that position?

A. It will be three years the 6th of May, 1902.

4. Have you been a resident of Peoria during all that time?

A. No sir.

5. Where was your former residence?

A. I lived in Akron, Ohio, two years immediately prior to coming to Peoria.

6. What was your business there?

A. Clerk for the Akron Gas Co.

7. What were your duties there?

Ans. Stock clerk.

8. What are your duties in connection with the Peoria Gas & Electric Co. at the present time and what have they been since you became associated with it about three years ago?

A. I was storekeeper when I first came out here, that is, a clerk keeping track of the material.

9. Did your duty necessitate the taking care of all of the stock handled by the company for all purposes?

Ans. No sir.

10. What class of stock did it cover?

Ans. Building material.

11. That was when you first came here?
Ans. Yes.
12. And prior to the time the company started to manufacture gas—that was before the plant was constructed?
Ans. Yes sir.
13. What have you done since the construction of the plant was completed?
A. Kept track of material, all that was received and went out, and up to the last year or year and a half I kept the manufacturing record.
14. In what manner did you keep an account of the stock
1356 received and sent out?
A. I kept track of the material, that is, through the store room book in a book-keeping way—kept track of what we used.
15. When did you first enter upon any books belonging to the company material received?
A. I came here on the 6th of May and we did not get our books for about 10 days after that but we had material before I came here.
16. Has it been your custom to enter upon those books from day to day the material as it was delivered at the company's place of business?
A. We kept track of that with a blotter and then checked our bills from that.
17. Then the first book into which you make entries of that kind is a blotter?
Ans. Yes sir.
18. Who makes those entries?
Ans. I do.
19. What do you do with them then?
A. They are held until we receive the bills and the bills are checked with the material received.
20. Do you subsequently carry those accounts into another book?
Ans. Yes sir a store room and stock ledger.
21. Has that portion of the business been handled in that manner during the time you have kept that stock account?
Ans. Yes.
22. What do you do with stock sent out?
A. It is according to what it is used for; when material goes out for distribution it is charged up to distribution account and the material for manufacturing is charged to manufacturing account.
23. When are those charges made with reference to the time the material is sent out?
Ans. The very moment.
24. Of what does your manufacturing account consist?
A. It includes the amount of gas made and coal stock.
1357 25. Then you carry in that account all that enters into the manufacture of gas?
A. You mean in the store room stock?
26. No, in the manufacturing account.

A. We do not keep that in an account at all; we keep that in the store room; it is not charged up to the account until it is used.

27. You do then charge it up, don't you?

Ans. Yes sir.

28. Do you charge that in your manufacturing account?

A. Yes sir.

29. And is that true of everything that goes into the manufacture of the gas?

Ans. Yes sir.

30. Who makes all the entries pertaining to these accounts to which you have referred: In other words, is there anybody makes any entries except yourself?

Ans. Yes sir, Mr. Eustace.

31. What entries does he make?

A. He just O. K's.

32. I mean who makes the entries in the book?

Ans. I do.

33. And there is no one else?

Ans. No sir.

34. When material for the manufacturing department is taken to the works, is it charged at the time?

A. No sir; a memorandum is made of it in the blotter and it is charged up to the store room, then when it is used it is charged up to the account it is used for.

35. Then you do make an entry of it at the time it is taken?

A. Yes sir.

36. How many different classes of items do you carry on your books in the way you have mentioned pertaining to the manufacturing department?

Ans. I could not say.

37. How many books do you keep in the prosecution of 1358 your duties and what are they?

A. I keep a store room ledger; manufacturing ledger; a sales book, that is, sales we have at the works, and an invoice book.

38. What classes of items do you carry in each of the different books to which you have referred?

A. The store room ledger takes in everything, every piece of material and machinery we buy that could be inventoried; the invoice book is just a copy of the invoices as they are received; the munufacturing record just shows the amount of gas made, sent out, etc., coal stock in pounds.

39. In what book do you enter coal consumption from day to day?

A. In the manufacturing record.

40. Is that the same book in which you enter your gas production from day to day?

Ans. Yes sir.

41. What is the sales book?

A. That shows the number of pounds of coke delivered, etc.

(The MASTER:)

42. The sales book shows your residuals and the sale of them?
Ans. Yes sir.

(Mr. TICHENOR:)

43. Do you also, in making the books to which you have referred, include prices of any description or simply stock?
Ans. Some of them do; some of them don't have anything to do with the prices.

44. Does that in which the price applies pertain to a particular portion of the work or a particular portion of the material?
A. No sir.

45. In what cases do you handle the prices as well as the material itself?
A. The store room ledger gives the cost prices.

46. Do you handle in that store room ledger freight accounts as well as stock?
Ans. Yes sir, that is added to the cost.

47. Have these books been kept in the way you have de-
1359 scribed since the commencement of the manufacturing of gas at the complainant company's works?
A. They have always been kept just the same.

48. How often do you enter gas production?
A. Every 24 hours.

49. From what source do you get your information from which those entries are made in your account?
A. Statements of holders and meters.

50. Do you know the process by which those quantities are arrived at?
Ans. I could not say that I do.

51. Who furnishes yeu the items from day to day which you enter—I am speaking of gas only?
Ans. The engineer of the company.

52. You have nothing whatever to do with obtaining those items from the holders or meters?
Ans. No sir.

53. Do you carry one or two accounts showing gas production each day?
Ans. Two accounts.

54. What two accounts are those?
A. The amount of gas put into our holder and the amount of gas put into the holders belonging to the Peoria Gas Light & Coke Co.

55. How long have you been carrying those two accounts?
A. Since October 24, 1901.

56. Do those items, which you enter from day to day pertaining to gas, show production for those several days, or do they show output from meters?
Ans. From production.

57. And without any reference whatever to actual consumption?
A. It has nothing to do with consumption.
58. Have you in your possession the book in which that gas account is kept?
A. Yes sir (witness hands counsel book).
59. State whether or not the book now before you showing on the front fly leaf the words, "Works record of manufacture,
1360 March 13 1902, to ——" is the book to which you have referred as containing the gas account?
Ans. Yes sir.
60. In whose hand writing are they entered in this book?
A. Several different people.
61. I understood you to say you had kept those accounts continuously all the time?
A. I was speaking of the store room ledger.
62. Have you also kept the gas account?
A. Not all the time, I kept it on and off about a year, commencing about the first of March, 1901.
63. Have you kept that book all the time from about March 1, 1901, up to the present time?
Ans. No sir.
64. Who else has participated in it?
Ans. John Robb.
65. How was the work with reference to keeping these accounts divided between yourself and Mr. Robb?
A. It was according to who had the most time to do the work.
66. What portion of the time has and does Mr. Robb attend to the work?
A. Sometimes he comes down there once a day, sometimes twice and sometimes not at all.
67. What portion of the time do you spend at the works?
A. Ten hours every day.
68. What other duties do you perform besides keeping the book to which you have referred?
A. I keep the time book, look after the store room stock, the store room record, that is, the manufacturing record.
69. Is your time book kept from day to day?
Ans. Yes.
70. And have you had entire charge of the time book?
A. No sir.

Mr. RITCHER: I will say that so far as putting that book in evidence or any portion of it is concerned the complainant will
1361 not make any objections because the witness has not made all of the entries therein. If counsel wants the other party he can be produced but we will not object on that ground.

71. What book other than the one you have just identified have you, or anyone else at the works, used for keeping the daily record

of gas production during any portion of the time concerning which you have testified?

A. This book (witness producing book).

72. What difference is there between the book which you first identified and the one which you now refer to, the first being marked "Exhibit 20" and the second "21"?

A. This last book I produce shows the amount of gas delivered to the Peoria Gas Light and Coke Co.

73. The first book then pertains to the consumption by your own company?

Ans. Yes sir.

74. Do these books, Exhibits "20" and "21" show the quantity of gas passing through each of the two meters per day?

A. They show the amount of gas registered.

75. The register is of the amount of gas which actually passes through the meters?

Ans. Uncorrected.

76. For what purpose are corrections made?

A. Temperature and barometer.

77. You correct them with reference to a certain fixed temperature and barometer?

Ans. Yes sir.

78. And sometimes that would be an increase and sometimes diminish?

Ans. Yes sir.

79. What was the output of gas of complainant company on September 1, 1901, that is, the amount of gas sent out?

A. 115,700 cubic feet.

80. What was the amount of gas sent out on October 1, 1901?

A. 161,400 cubic feet.

1362 81. Does this book "Exhibit 20" show the dates all the way through?

Ans. It shows a part of them.

82. That is the way you keep the record, by keeping each day separately?

A. This book was first commenced to be kept in October, 1900.

83. And since that time, the days of the month and the months are all given?

Ans. Yes sir.

84. Please explain the different columns which you carry in this book as it has been kept?

A. The first column is the day and date; the next is stock of gas on hand at 6 a. m.; the third column gas on hand at 6 p. m.; the fourth station meter index at 6 a. m.; the 5th at 6 p. m. Now this is divided up into three columns, the first space is the uncorrected make, the day, the night and the total.

85. Those words appear at the head of the columns?

A. Yes sir.

86. What do those different columns mean?

A. The amount of gas made from 6 a. m. to 6 p. m., the amount of gas made from 6 a. m. to 6 p. m. and the total. The next one is the corrections.

87. You have under Tuesday, October 1*st*, in the column concerning which you have just testified, first the figures "88." What does that mean?

A. It means 88,000 cuic feet of gas made uncorrected.

88. And the figures 76 and 164 mean the same things do they?

A. Yes, it means 76,000 cubic feet and 164,000 cubic feet.

89. That is for the 24 hours?

Ans. Yes sir.

90. Proceed with the subsequent columns?

A. Corrections; the average temperature at the meter outlet; the average barometer of the day taken four times a day; then there is the tabulator number which is a given factor for temperature

1363 and *and* barometer.

91. From what source is that obtained?

A. We have a key at the works.

92. It is a regular table for that purpose?

A. Yes sir, given in books.

93. What use do you make of it in making your corrections?

A. We use it as a factor in getting the correct amount of gas made if the temperature was at 60 and the barometer was at 30 inches. The next column is corrected make, the day, the night and the total. The next column is the send-out, the day, the night and the total. The next column is the candle power, the hour taken.

94. Have you any special hour at which that is taken?

A. No sir.

95. Who takes that?

A. Mr. Eustace the superintendent. The next column is the total stock, total amount of coal in pounds on hand 6 a. m.

96. That means your entire coal stock does it?

A. Yes sir, for this particular month it does.

97. How is that item obtained?

A. Well, we take that amount of coal received each day from being weighed on railroad scales and received.

98. Do you also take into account the coal consumption from day to day?

A. Here is the coal received—it shows right along here; amount of coal received; amount of coal carbonized day and night; total day and night yield; retorts in use; make per retort; retorts on carbon; number of charges; pounds per charge; number of men in the manufacture of gas and make per man.

99. Are all those various columns, concerning which you have testified, marked at the head to correspond with your testimony?

A. They are not all marked in full, no sir; some of them

1364 are not.

100. Has the account all the time since the 1st, of October

1901, been carried in columns the same as you have now indicated—you have made no change in your system?

A. One or two places have been a little changed, but it does not amount to anything only putting in another column; we have the same heading every month; we had a meter down there that has been taken out and is not in use, that column does not appear over here because that meter is not in use.

101. That column appears only where you had such meter in use?

A. Yes sir.

102. Do you know for what purpose that air meter was used?

A. No sir.

103. Who furnished you the figures appearing in the column?

A. Just carried it from previous months not being in use.

104. How long is it since that was in use?

A. February, 1901, I believe; I believe it was used a little bit in October but I don't know what for.

105. I understood you to state that on the first day of October, 1901, the output of complainant company was 161,400 cubic feet, state whether or not that item appears in any column in the book Exhibit "20" and if not how it is arrived at from that book?

A. I don't believe it shows 161,400 in any other column, no sir.

106. Is there a column which shows those figures?

A. Yes, send out October 1, 1901.

107. And those figures are given after correction, as I understand you, for temperature and barometer?

A. Not with correction, no sir; we do not make any correction for the amount sent out but for the amount made only.

108. Then the correction, as I understand it, has nothing whatever to do with the output?

Ans. No sir.

(The MASTER:)

109. The output from the holder, you mean?

1365 A. Yes sir.

(Mr. TICHENOR:)

110. Beginning with October 1, 1901, your daily output, and the other items pertaining to the manufacture are entered consecutively are they not from page to page in Exhibit "20"?

A. Yes sir,

111. What is the last date upon which those items are entered?

A. May 5, 1902.

112. I see on your book under date of October, 1901, some entries in red ink. What are those entries and why are they entered in red ink?

A. It is the amount of gas delivered to the Peoria Gas Light & Coke Co.

113. Was that done before you began to keep a separate book for that company?

A. At the same time, it was entered the same day.

114. Do those items also appear in book marked "Exhibit 21" which you say covers the gas delivered to that company?

A. Yes sir, the figures are taken from this record and put into this book.

115. Then the book Exhibit "21" is the book in which you first enter the gas the complainant company has delivered to the Peoria Gas Light & Coke Co.?

Ans. Yes sir.

116. Have you since October, 1, 1901, still carried in book "Exhibit 20" the product you have delivered to the Peoria Gas Light & Coke Co.?

Ans. Yes sir.

117. How does that appear in the month subsequent to October, 1901, in the same way and shape?

A. Yes sir, it is all in red ink.

118. In the same column I see entries in red ink and black ink together, will you specify what those severally mean?

A. The amount of gas delivered in red ink is the gas de-
1366 livered to the Peoria Gas Light & Coke Co. and that in black ink is what we put in the Peoria Gas & Electric Co.'s holder.

119. And those are the several days opposite which the entries appear?

Ans. Yes sir.

120. And that method is continued all the way through up to the present time?

Ans. Yes sir.

121. So far as pertains to the gas furnished by the complainant company to the Peoria Gas Light & Coke Co., from the time it began to furnish until now, is the book which is marked "Exhibit 20" complete. That is to say, does it show all of those quantities?

A. Yes sir.

122. Then independent of Exhibit "21" you have in your own book all the gas you furnished during that time?

Ans. Yes sir.

123. Is it true that during all the time continuously since October 24th, 1901, you have been furnishing gas to the old company every day?

Ans. Yes some every day.

124. And whatever quantity you have furnished to that company correctly appears in the books you have identified as Exhibits "20" and "21"?

Ans. They are correct, so far as I know.

125. Look at Exhibit "21" and explain the meaning of the different columns used there?

A. The first column is day and date.

126. And those correspond to the day and date in your other book?

A. Yes sir. The next column holder No. 1, 6 a. m. and 6 p. m.; holder No. 2, 6 a. m. and 6 p. m.

127. What do you mean by holders No. 1 and No. 2?

A. They are the Peoria Gas Light & Coke Co.'s holders.

128. Which holder do you designate as No. 1 and No. 2?

A. The largest holder is No. 1 and the next holder is No. 2; there are three holders there; holder No. 3, 6 a. m. and 6 p. m.

1367 129. Those holders are all in use, are they?

A. *Tow* of them are; one of them is a sort of a relief holder.

130. What do you mean by a relief holder?

A. To be filled up when we have no other place to put the gas, I guess. The next is total stock 6 a. m.; next meter statement of the Peoria Gas Light & Coke Co., 6 a. m. and 6 p. m.; gross gas delivered day, night and total; corrections, the average temperature at their meter outlet, barometer, and tabular number; next column gas delivery, day night and total; next, send-out, day, night and total. The first month of November we did not figure up the day, night send-out.

131. You mean you did not separate them?

A. We did not separate them, we just struck a total

132. You have simply then the amount for the 24 hours?

A. Yes, for November.

133. That appears in the last column?

A. Yes, that appears for November.

134. Then from December on, those items correspond exactly so far as method is concerned with your books for the Peoria Gas & Electric Co.?

A. This book has nothing to do with that one only the amount of gas delivered.

135. It is carried out in the same way, you have the day and night statement just the same?

A. Yes, but the send-out, day, night and total up to the 25th of December is uncorrected; it is figured from the uncorrected amount of gas delivered to them.

136. Do you correct that at all?

A. We make corrections for the amount of net gas delivered, the same as though we put it into our holder according to their temperature.

1368 137. Does the question of correction as to temperature, etc enter at all into the daily output?

A. It has nothing to do with the output so far as I know.

138. In all the various columns of the books, Exhibits "20" and "21," pertaining to quantities of gas, what is meant by the figures which you have used for same. In Exhibit "21" under November 1, 1901, you have under the column, "Net gas delivered" "95.4"?

A. It means 95,400 cubic feet; the figures "95" is thousands and the figure "4" is hundreds.

139. Is that true of all the various figures which are entered in substantially the same way?

A. Those pertaining to the gas are.

140. Is that true in both of the books?

Ans. Yes sir.

141. Up to what time is the book "Exhibit 21" complete now?

A. To May 5, 1902, at 6 a. m.

Defendant's counsel offers in evidence the book identified by the witness marked "Exhibit 20," commencing with the first of September, 1901, and extending up to the present time, May 5, 1902, at 6 a. m., and also offers in evidence from the book identified by the witness marked "Exhibit 21" the items commencing with October 24, 1901, and extending up to 6 a. m. in the morning of May 5, 1902; a copy of which said books *are* hereto attached marked "Exhibits 20" and "21."

1369 142. What, if anything further have you to do with the accounts concerning which you have testified after they are entered in the different books mentioned?

A. I do not know that I have anything more to do with them.

143. State whether or not you furnish to the general office of the complainant company any duplicate statements of what those books contain so far as pertains to the testimony you have given concerning them?

A. You mean the up-town office?

144. Yes sir?

Ans. We just give them a copy of what the books show.

145. How often do you furnish such copy?

Ans. Every day.

146. Is that copy complete as to all of the columns appearing on those two books Exhibits "20" and "21"?

A. No sir, not quite; we do not show the meter statement; we do not show the average temperature or barometer or tabular numbers; we show in parenthesis the uncorrected make, we do not show the amount of pounds received of coal; we do not show the amount of coal carbonized day and night; we just show the total; we show the average yield per 24 hours; we show the benches in action, the retorts in use and the make per retort; we show the total number of men employed at the works and the stock of coal.

JOHN M. ROBB, called on behalf of defendant, being first duly sworn, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. State your name and place of residence?
A. John M. Robb; Peoria, Ill.
2. What is your business?
A. Superintendent of distribution in the gas department of the Peoria Gas & Electric Co.

1370 3. How long have you occupied that position?
A. Since August, 1899.
4. How long have you been engaged in a similar line of work?
A. This is my first experience in that capacity.
5. Where have you resided during that time?
A. Since May, in Peoria; previous to that time at Akron, Ohio.
6. Were you engaged in the gas business there or some part of it?

Ans. Yes, for some two years previous to that with the Akron Gas Company.

7. Is there more than one company there?
A. At the present time there is also a natural gas company.
8. Was there at that time?
A. Yes sir, two companies, a natural gas company and one artificial gas company.
9. What are your duties and what do you do as superintendent of distribution of complainant company?
A. I take charge of the gas from the time it leaves the work and of the apparatus necessary to distribute it and see that the gas is delivered to the consumers.
10. What, if anything has that to do with the care or supervision over the holders, station meters and the like of that upon the company's ground?
Ans. Nothing at all.
11. Do you also have charge of street work in connection with the duties to which you have referred?
A. Yes sir, I plan the work that has to be laid and see it is put in.
12. Does that refer to mains and services as well?
A. Yes sir.
13. Have your duties covered those items during the time to which you have testified?
Ans. Yes sir.

1371 14. Are you familiar at the present time as to location, size, etc., with all of the mains of the Peoria Gas & Electric Co.?
A. Yes sir.
15. Do you remember about the time the complainant company began to serve gas to consumers?
Ans. Yes sir.
16. Are you able to state from recollection about what date it was?

A. Not exactly but it was the latter part of March, 1900.

17. Do you remember approximately how many miles of mains it had at that time?

Ans. 26 miles and a fraction.

18. What extensions have been made to the mains since that time by your company?

A. There has been practically no main extension except an extension of 4 inch main for 400 or 500 feet in the alley between California and Missouri avenue- and that was part of our original plan of work.

19. Does your authority extend over the placing of services, meters, etc.?

Ans. Yes sir.

20. At the time your company began to serve customers with gas, did you know the territory covered by the Peoria Gas Light & Coke Co.?

Ans. Yes approximately.

21. What portion of the territory reached by the complainant company was then being served by the Peoria Gas Light & Coke Co.?

Objected to as immaterial and irrelevant.

A. All of it or nearly all; I believe all of it was.

22. Do you know how many service pipes you had in when you first commenced to serve gas?

Ans. I think the number was pretty close to 2,000.

23. How many of those service pipes were put into buildings that were already supplied by the Peoria Gas Light & Coke Company for gas service?

(Objected to as immaterial and irrelevant.)

1372 A. I cannot answer as to that: we took the applications wherever we could get them without regard to what was already in the building.

24. Did you personally superintend the placing of those various service pipes?

Ans. Yes sir.

25. What part of the city did your system of distribution cover at the time you began to serve gas?

A. We took in all of the business district and nearly all of the residence district.

26. Have you any record showing how many of the places where you put in services were already supplied by the Peoria Gas Light & Coke Co.?

(Objected to as immaterial and irrelevant.)

A. No, I think we have no record that will show that.

27. What proportion of your services were put in to active use at the time your company began to serve gas?

A. I believe nearly all of them were, all where we could induce the people to use gas.

28. You also had charge of setting the meters?

Ans. Yes.

29. While the meters were being set for those various services did you give the subject your personal attention, that is, visit the premises where the meters were actually located?

A. No, I did not.

30. Who had charge of that part of the work?

A. Do you mean who visited the premises?

31. Yes sir, who actually superintended the work or did it?

A. So far as the superintendency of the work was concerned, I had charge of that but only the inspectors and the men who set the meters visited the premises.

32. Have you records showing who all of those consumers were at that time, I mean at the time you began to serve gas?

A. Yes, our records will show that.

1373 *A. Yes our records will show that.*

33. How many service pipe has the Peoria Gas & Electric Co. at the present time, if you know?

A. About 2570.

34. How many of those are in actual use, if you know?

A. I cannot say as to that.

35. Have you records which will show that fact?

A. Not directly but by going over the records of our meters and services the matter can be got at.

36. Do those figures to which you have referred represent new services actually placed since the time your company began operations?

Ans. Yes sir.

37. In what territory have those services been laid as compared with the territory occupied by the Peoria Gas Light & Coke Co.

Objected to as immaterial and irrelevant.

A. In about the same territory they supply.

38. Who has charge of the street repairs for the Peoria Gas & Electric Co.?

Ans. I do.

39. Have you a street foreman?

Ans. Yes sir.

40. Who is it?

Ans. At present time Dan Gorman.

41. How long has he been street foreman for the complainant company?

Ans. Since October or November, 1901.

42. Over what portion of the city at present supplied with gas does your supervision of the street work extend?

A. Over all the city that is supplied with gas.

43. State whether or not there is any other person employed by

the complainant company who acts as assistant to you regularly or at intervals or whether that work is entrusted to you exclusively.

A. I have full charge of that.

44. And has that been true during all the time since you became engaged with complainant company?

Ans. Yes.

1374 45. What are the duties of your street foreman in connection with repair or new work?

A. To install such work as I lay out for him.

46. Does he depend upon you exclusively for directions?

A. Yes sir.

47. Is he the only man in the employ of complainant company acting in the capacity of street foreman, as you call him?

A. Yes sir.

48. Do you know where Dan Gorman had been employed prior to the time he engaged with the complainant company as you have stated?

A. Yes sir.

49. Where?

(Objected to as immaterial.)

A. He was employed by the Peoria Gas Light & Coke Co.

50. In what capacity?

Ans. As street foreman.

51. How long is it since the complainant company laid the new mains to which you referred a short time ago?

Ans. Nearly 2 years.

52. In the performance of your duties where do you spend the greater portion of your time?

A. At the company's up town office.

54. Under whose immediate jurisdiction or supervision are you and have you been as an employé of the complainant company?

A. Under Mr. Little's, our general manager.

55. With reference to the work of the character described by you, do you depend upon him for instructions or is authority therefore vested in you in the first instance?

A. No, my instructions for work come from Mr. Little.

56. During the performance of any work, pertaining to putting in services or repairs, are you personally upon the ground where the work is in progress?

A. In some instances, yes, but not in all cases.

57. Who has charge of ordering material from the works 1375 or elsewhere in the making of these repairs, or in placing new work?

A. I have.

58. Does the complainant company carry in Peoria a stock of material for repairs and extensions?

Ans. Yes sir.

59. Where is that stock carried?

Ans. At the works.

60. And that is where you get your material for such purposes?

A. Yes sir.

61. Have you anything then to do with ordering or purchasing any of the material used in your department?

A. I purchase all of it subject to Mr. Little's approval.

62. Has that been the case during all the time you have been engaged with the complainant company?

A. Yes, practically all except the first material that was ordered for the main work.

63. Are you referring now to materi ordered for the original construction?

Ans. Yes sir.

64. How many men has your company at the present time engaged in street work?

Ans. Between 25 and 30.

65. Are those divided into different gangs or are they all in one?

Ans. Two gangs.

66. And are they all under Mr. Gorman's supervision?

A. No, but one gang is under Gorman's supervision.

67. And all of them are generally under your supervision?

A. Yes sir.

68. And you are directing all the work are you?

Ans. Yes sir.

69. Is that about the regular number of men you keep for work of that kind?

A. No, it all depends on what new work and what repair work we are doing.

70. On the average during the past two years, how many men have you kept at different times for that class of work?

A. That is a difficult question to answer; there has been
1376 about 3 men constantly on the pay roll and the number varies according to the need of the work.

71. How does it happen at the present time the number is so large, if it is a large number?

A. It is not unusually large but at this time of the year we have a great many orders for services and in order to take care of those services it is necessary to keep that number of men.

72. And those men are largely engaged in putting in service pipe?

Ans. Yes sir.

73. That is they are almost all on new work and not on repair work?

Ans. Yes sir.

74. Have you at the present time any repair work in progress?

Ans. No sir, I have not.

75. Do you remember how long it has been since you have had any repair work in street mains?

A. No, I don't recall that either.

76. How much, if any, time do you on the average spend at the works?

A. At the present time, I put in about a half an hour a day there regularly for the purpose of going over the work of the fitting shop.

77. That is preparatory to putting in services and work of that character, of which you have charge, on the streets?

A. Yes sir.

78. Is that about the same as it has been for sometime past?

A. Yes sir.

79. You have never had any work to perform at the works except in connection with the preparation of your material for street work, have you?

A. Yes sir, I have; last year I was superintendent of the works for five or six months—from May until October, 1901.

1377 80. Was that up to the time the Peoria Gas Light & Coke Co. discontinued operations?

Ans. Yes sir.

81. And that was when Mr. Eustace returned to your company, was it?

Ans. Yes sir.

82. During that time, your place in the complainant company's works was substantially the same as that held by Mr. Eustace?

A. Yes sir, except in addition I managed the street work too.

83. While you were the superintendent at the works, did you spend the major part of your time there?

Ans. Yes sir.

84. Had you had any previous experience as a superintendent?

A. No sir.

85. Has your company at the present time, and has it had for some months last past, facilities for doing all of its metal fitting for street and service work?

Ans. Yes sir, it always has had.

86. State whether or not you know of a connection or main from the purifyers of the complainant company to the station meter of the Peoria Gas Light & Coke Co.?

A. Yes sir I know of such connection.

87. When was that put in?

Ans. In September, 1901.

88. Who had charge of the work?

Ans. I did.

89. Who gave you the order for placing it?

A. Mr. Little did.

90. What is its length, if you remember?

A. I have forgotten but it is a matter of some 800 or 900 feet though.

91. What is its size?

Ans. 16 inch.

92. For what purpose was it placed there?

A. For delivering gas manufactured at our works to the Peoria Gas Light & Coke Co.

93. Did you superintend that work until the connections were all completed?

Ans. Yes sir.

1378 94. What apparatus, if any, does that connection contain in the way of cut-offs?

A. It contains only one cut-off located in our works.

95. That was put in as part of its original construction, was it?

Ans. Yes sir.

96. Do you know whether or not there is on North Adams street a connection between the pipes of the complainant company and the pipes of the Peoria Gas Light & Coke Co.?

A. There is none that I know of.

97. Do you know whether or not there is any such connection on East Glen Oak avenue in the city of Peoria?

A. No sir.

98. Do you know whether or not there is another connection than the one at the works mentioned by you between the pipes of the two companies?

Ans. There is none that I know of.

99. Since your connection with the complainant company, have you performed any duties other than those to which you have referred?

A. No, at first I was their draughtsman and the superintendent.

100. During any portion of the time you have been employed by that company, have you had any other employment or any other business?

Ans. No sir.

101. During any part of that time, have you performed any work for the Peoria Gas Light & Coke Co.?

Ans. I have.

102. What has been its nature?

A. That is not in the character of an employé for them, I have not performed any such work but I have looked after their meters and services.

103. Throughout the entire territory served by that company?

A. Yes sir.

1379 104. During what time?

Ans. Since October, 1901.

105. Since the Peoria Gas Light & Coke Co. discontinued the manufacture of gas?

Ans. Yes sir.

106. State whether your supervision of that work for the Peoria Gas Light & Coke Co. has been of the same character it has been in connection with the Peoria Gas & Electric Co.?

A. Yes sir, it has been work of the same character.

107. And done in the same way?

Ans. Yes.

108. Upon whom, if anyone, are you dependent for instructions with regard to such work as you do and have done of that character for the Peoria Gas Light & Coke Co.?

A. I depend on their office for instructions.

109. And who in their office gives you those instructions?

A. The clerk who is delegated to receive orders and send them to the fitting shop.

110. Who is it does that?

Ans. Thomas N. Gorman.

111. Where do they get the material which goes into such services as you install for that company?

A. It is taken from the storeroom of the Peoria Gas & Electric Co.

112. Where is the fitting done, that is, preparing such material?

Ans. In the fitting shop of the Peoria Gas & Electric Co.

113. Then the material comes from the same source and is prepared by the same people as similar material used for the gas & electric Co.?

Ans. Yes sir.

114. And that has been the case ever since October 24, 1901?

A. Yes sir, it is handled similarly, except it is charged to the Peoria Gas Light & Coke Co. instead of being charged to the Peoria Gas & Electric Co.'s account.

115. Do you do that charging yourself?

A. It is done under my supervision in our office.

1380 116. Is a regular account kept in the complainant company's office with the Peoria Gas Light & Coke Co.?

Ans. Yes sir.

117. What, if anything, has Mr. Little, general manager of complainant company, to do with those repairs in the way of instruction or otherwise, if you know?

A. Nothing, so far as I know, except he is my superior and he is consulted in any work I handle.

118. Including that which you do for the Peoria Gas Light & Coke Co.?

Ans. Yes sir.

119. State whether or not the Peoria Gas Light & Coke Co. pays you a salary for that work?

Objected to as immaterial and incompetent.

A. No, it does not.

120. State what, if any, increase was made in your salary on or about the 24th of October, 1901?

Objected to as immaterial and irrelevant; also because it is asking for private matters of the witness, confidential relations between him and the company and has no bearing in the case.

A. I received no increase.

121. Has anyone else in the office of the Peoria Gas Light & Coke

Co. given you any instructions with reference to that work except Mr. Gorman?

Ans. Mr. Bickwell has.

122. Have those instructions given by Mr. Bickwell been of substantially the same character as those given by Mr. Gorman?

A. Yes sir.

123. Since you have been doing that work for the Peoria Gas Light & Coke Co., how has knowledge of the necessity for it come to you?

A. Such matters as came to my notice I take care of immediately and other matters are reported to me by Mr. Gorman.

1381 124. What character of work for the Peoria Gas Light & Coke Co. have you taken care of without such orders or any others in *his* company's office?

A. Well, any such work as I believe is necessary I go ahead and perform.

125. Are you speaking now with reference to putting in services and repairs, also?

A. In repairs—of course the orders for new work have to be left at the office and through the office come to me.

126. You are speaking now of the office of the Peoria Gas Light & Coke Co.?

Ans. Yes sir.

127. Those orders for services have to be signed by the proposed consumer, do they not?

A. Orders for services must be signed by the property owner.

128. And applications for meters are signed by the consumer?

A. Yes sir.

129. Do you also receive from the Peoria Gas Light & Coke Co. orders for setting meters precisely the same as you do for putting in service pipe?

Ans. Yes sir.

130. State what portion of the work of the Peoria Gas Light & Coke Co., of the character to which you have referred, has been done under your supervision since October 24, 1901.

A. It has all been done under my supervision.

131. State whether or not the Peoria Gas Light & Coke Co. has in its employment any men at work on the streets engaged in repairing or putting in new work.

Ans. No sir.

132. Has it had since October 24, 1901?

Ans. No.

133. Is there any other business or work which you have transacted, or over which you have had supervision, for the Peoria Gas Light & Coke Co. since October 24, 1901, than that which you have already explained?

1382 A. No sir I have just — look after their distribution work.

134. State in what manner you handle their distribution of

gas as compared with the manner in which you handle the distribution of gas for the complainant company?

A. It is handled in just the same way except everything we do for the Peoria Gas Light & Coke Co. is charged to a sales account and billed to them and everything done for the Peoria Gas & Electric Co. is charged to its respective accounts on the company's books.

135. Who fixes the prices at which those charges for material and work are made to the Peoria Gas Light & Coke Co.?

A. They are fixed by the invoice at which that material is billed to us.

136. What are they with reference to those invoices?

A. At cost, the same as the work costs us.

137. What prices are charged for the labor which you furnish to the Peoria Gas Light & Coke Co.?

A. That is charged at cost.

138. State whether or not in putting in the large main from the complainant company's works to the station meter of the Peoria Gas Light & Coke Co., the expense of that was borne by the complainant company or by the other company?

A. My recollection is it was borne by the Peoria Gas & Electric Co.

139. From what source did you, as superintendent of that work, obtain the material which went into that construction?

A. I obtained it from the Peoria Gas & Electric Co.'s store room.

140. Whose laborers were employed upon that work?

A. Peoria Gas & Electric Co.'s laborers.

141. Have you since October 24, 1901, had anything what-
1383 ever to do with the manufacturing plant of the Peoria Gas Light & Coke Co.?

A. No sir, I have not.

142. Had you prior to that time?

Ans. No sir.

143. Who furnishes the meters you set up for the Peoria Gas Light & Coke Co.?

A. We use their meters so far as they have stock of the requisite size and for such meters as have to be purchased we purchase them and charge them to them the same as other material.

144. Do you mean you take such extra meters out of the stock of the Peoria Gas & Electric Co. the same as you do those you set for your company?

A. No sir, the stock of meters are kept separate and distinct.

145. You purchase them entirely separate do you?

Ans. Yes sir.

146. At what price do you charge them to the Peoria Gas Light & Coke Co.?

Ans. At cost price plus the freight.

Cross interrogatories by Mr. RITCHER:

1. Do you bill the expense of labor and material for repairs to the Peoria Gas Light & Coke Co.?
A. Yes for all such work as we do for them.
2. Directly to the old company?
Ans. Yes sir.
3. You said it was entered on a sales account?
Ans. Yes sir.
4. Is that in the old company's office?
A. No, it is in our office.
5. You make the entry first in the books in your office?
A. Yes.
Q. Then you attend to the billing to the old company?
A. Yes sir.
7. Is that true of work you discover yourself and do for the old company as well as work which is directly ordered by it?
1384 A. Yes sir, that covers every thing which is done by the Peoria Gas & Electric Co. for the Peoria Gas Light & Coke Co.

Adjourned until Tuesday, May 6, 1902, at 9:30 o'clock a. m.

United States circuit court room, Government building.

PEORIA, ILLINOIS,
TUESDAY, *May* 6, 1902—9:30 o'clock a. m.

Parties met pursuant to adjournment.
Present: Judge I. C. Pinkney, special commissioner; Mr. W. T. Irwin, Mr. E. C. Ritcher and Mr. W. T. Abbott, appearing for complainant; Mr. Henry Mansfield and Mr. F. H. Tichenor appearing for defendant.

THEODORE J. MILLER, recalled on behalf of defendant, testifies as follows:

Direct interrogatories by Mr. TICHENOR:

1. You are the same Theodore J. Miller who has once before testified in this case?
Ans. Yes sir.
2. Have you with you now the secretary's book referred to by you in your former testimony?
Ans. I have not.
3. Have you been served with a subpœna to produce it?
A. Yes, this morning, a few minutes ago.
4. Where is the book at the present time?
A. I suppose it is in the office; I went down there and as Mr. Little had not arrived yet I could not get at the vault.

5. Is Mr. Little the only one having access to the particular portion of the vault where the secretary's books and records are kept?
Ans. I don't know.
6. Do you know where Mr. Little is to-day?
A. I do not but I was led to believe he was at home from the statement made me at the office; they said they expected him down soon.
1385 7. Do you keep in the vault, to which you have referred, all the books, papers and documents in your possession or custody as secretary of complainant company?
A. Yes sir, they are all kept in the vault.
8. Has that been the rule during the time you have been secretary of complainant company?
Ans. Yes sir.
9. Have you a key to that vault?
Ans. No sir.
10. Have you ever had?
Ans. No sir.

Mr. IRWIN: Counsel for complainant will have produced before the master here any books, papers or documents desired by counsel for defendant that may in any way be competent in this case, or that counsel for defendant may have the right to inspect or inquire about, on the coming-in of court tomorrow, or any other day on any reasonable notice, if counsel will give us a list of the papers, documents or books they desire to have produced.

The MASTER: Is that stipulation satisfactory, Mr. Tichenor?

Mr. TICHENOR: We are not familiar with their method of keeping their records nor have we any knowledge or means of knowledge as to all the papers or documents in their possession, or supposed to be in their possession, which may be material in this inquiry and proper and competent for us to have produced. For that reason it is impossible for us to specify definitely in some cases the exact material which we desire produced.

The MASTER: Can you specify the books you desire this witness to produce?

Mr. TICHENOR: We desire the production of the secretary's book, or books, as the case may be, from the beginning of the record of complainant company to the present time; also, any and all other agreements, contracts, documents, powers of attorney, or other papers in his custody as such secretary, so far as they pertain to any of the operations of complainant company covering the period
1386 from the beginning of its existence to the present time.

Mr. IRWIN: So far as it pertains to the gas business.

Mr. TICHENOR: Certainly.

The MASTER: Mr. Miller can you produce the books and documents indicated at the coming-in of court this afternoon?

Mr. IRWIN: All those books and papers that can be produced will be produced tomorrow by Mr. Little who, I understand, is to be a

witness, in connection with his testimony. We will instruct him to produce them and if counsel for defendant desires to recall Mr. Miller for further examination on them we will stipulate that Mr. Miller will be present at any time he is wanted on giving us one or two hours' notice. My judgment is the books are locked up in the private part of the vault and I do not believe anybody carries a key to that except Mr. Little, and he is out of town today.

Witness excused with directions to report on Wednesday morning next at 10 a. m.

SUMNER R. CLARKE, recalled on behalf of defendant, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. You are the same Sumner R. Clarke that has testified before in this case?

Ans. Yes sir.

2. You have recently been served with a subpœna to produce certain books and documents—have you them with you?

A. No.

3. What is your reason for not having them at this time?

A. They are not in my possession and I have not had time to investigate whether I could produce them or not this morning.

4. Do you know in whose possession or custody they are at the present time?

1387 A. Mr. Little's; general manager of the company.

5. He has in his possession all the documents called for by your subpœna, has he?

Ans. I believe so.

6. And those documents are kept and always have been kept in the city of Peoria have they?

A. I have no positive information about that but I suppose they are here.

7. State whether or not the capital stock of the complainant company has been increased since its original organization?

Objected to as not the best evidence.

The MASTER: I think that is a matter that can be shown by the record but the witness may answer subject to the objection.

A. I cannot answer without referring to the books.

8. Look at the document now shown you marked Exhibit "22," purporting to be a certified copy of a document on file in the office of the recorder of deeds of Peoria county, Illinois, and certified under the hand of the recorder on Feb. 15, 1902, with the seal of his office attached, and state whether or not that refreshes your recollection so as to enable you to answer interrogatory 7?

Objected to as incompetent and not the best evidence.

The MASTER: I will not permit the witness to testify to anything the paper contains but that is not the question; he is simply shown the paper to refresh his recollection and he may answer subject to the objection.

A. It does.

9. What is your answer then to interrogatory 7?

Objected to same ground.

A. It has been increased.

10. Are you the same gentleman whose name purports to be affixed to the original of which Exhibit "22" is a certified copy?

1388 A. Yes sir.

11. Did you affix your name to the original of that document in your capacity as president of the complainant company?

Objected to same ground.

A. If that is a copy I presume my name is attached to the original.

12. Who first advanced the idea of increasing the capital stock of complainant company?

Objected to as incompetent and immaterial unless it is confined to the gas business.

Mr. TICHENOR: If the master please, so far as the gas and electric department are concerned they are so intertwined as to make the electric portion of it material in this inquiry. We have the same right to go into it as we have into the gas business. If there has been an intermingling of the two lines of business it is a matter which is chargeable to the plaintiff wholly.

The MASTER: The question in the mind of the master is, whether you are not attempting to show by parol a matter that is of record in the minutes of the proceedings of the directors. If that is true, of course it would not be competent to show it in this way.

Mr. IRWIN: Not only that, but this company was authorized to do half a dozen kinds of business and it has a right to capitalize to take care of any one or more of them and unless it pertains to the gas department, which the proof so far shows is run as a separate and distinct part of the business, it would be entirely incompetent.

The MASTER: I do not agree with counsel for complainant wholly in that respect. I think if they have intermingled their transactions so as to make an inquiry into one necessary to ascertain the truth as to the other they may go into it that far for that pur-

1389 pose only. The witness may answer subject to the objection.

A. I don't remember.

13. I think you have already testified that from the organization of the company to the present time you have been its president?

Ans. Yes, sir.

14. You have during all that time, or substantially all that tim performed the duties of president, have you not?

A. I have been away a great deal—probably half my time I a away.

15. When did you first have knowledge of the proposed increa of capital stock?

A. I don't remember and I don't know that I could refer to an records that would give me the information.

16. Who principally, if anyone, had to do with the matters pe taining to the increase of the capital stock?

Objected to as immaterial.

A. That is a question that might have been talked over betwee the directors or other stockholders, but I do not know of anyone i particular.

17. At the time steps were originally taken, and during the com pletion of the proceedings necessary for an increase, did you kno the reasons for such increase?

Objected to as immaterial.

A. In a general way.

18. What was that reason?

(Objected to same ground.)

A. Why in order to enable us to take up any matters that our charter gave us permission to take up.

19. In what lines of business was your company engaged in the month of Januray 1901?

(Objected to as immaterial.)

A. The gas and electric business so far as I know.

20. In what lines of business is your company engaged at
1390 the present time in the city of Peoria, or has it been engaged in at any time between January 1901 and the present time?

Objected to unless it is confined to the gas business.

A. Gas and electric so far as I know.

21. In the month of January 1901, or prior thereto, under your charter what other line of business did your company then contem plate undertaking or operating?

Objected to as incompetent and immaterial.

The MASTER: I do not see the materiality of that; the question is, what did they do or are doing?

Mr. TICHENOR: The witness has stated the increase was for the purpose of carrying out the provisions of their chartered rights and I want to ascertain what they had in contemplation.

The MASTER: The witness may answer subject to the objection.

Mr. IRWIN: I will instruct the witness that unless it pertains to the gas business in the city of Peoria he does not need to answer.

I will further state before we will submit to an investigation as to all this company has had, or now has, in contemplation in different lines of business outside of the gas business in the city of Peoria, we will insist upon submitting the matter to the court whether or not we are compelled to divulge our plans either past or future in other lines of business.

The MASTER: The master has already indicated he thinks the inquiry ought to be confined to what they are doing.

Mr. IRWIN: We have no objection to any inquiry so far as the company has exercised any rights under its license or franchise to manufacture and sell gas and will produce all the documents, papers and other evidence as to what has been done or is contemplated in that line, but as to other lines of business contemplated or undertaken in the past or contemplated for the future we insist and will insist they have no right to inquire into in this proceeding.

1391 The MASTER: I do not see any occasion for a ruling of the master in that matter. I do not think it competent but as the master has said a number of times in this case, he has no power to exclude questions or answers.

Mr. TICHENOR: For the purpose of informing the master, I will make this statement. The question is propounded for the purpose of showing that at that time there was no occasion whatever for increasing the capital stock, but it was part and parcel of a scheme which was subsequently completed and which we think we will show before we finish this case.

Mr. IRWIN: Has it anything to do with the gas business of this company?

Mr. TICHENOR: Yes sir.

Mr. IRWIN: If counsel stipulates it has I will withdraw my objection.

Mr. TICHENOR: I do not consider it necessary to make any stipulation of that character.

The MASTER: I presume, Mr. Irwin, that the statement of counsel for city carries with it the proposition they will connect it directly with the gas business.

Mr. IRWIN: If he will stipulate that I will withdraw my objection but I want to know for what purpose the inquiry is made. If it is for the purpose of going into the other plans, future or past, of this company with reference to something that has nothing to do with its gas franchise or charter rights in the city of Peoria, then I object to it, for they have no more right to go into that in this proceeding than they have a right to go into your private affairs.

The MASTER: I do not think the competency of the evidence is apparent at the present time.

Mr. TICHENOR: I would like to have the question answered.

1392 The MASTER: The witness may answer subject to the objection then.

Mr. IRWIN: Now outside of the gas business of the complainant, or any contemplated business connected therewith under the license

and franchise from the city of Peoria as set out in the pleadings
this case, I inform the witness he has a right to refuse to divul
Anything pertaining to the gas business of the complainant co
pany in the city of Peoria, whether it is within the line of t
license—franchise—from the city of Peoria, or outside of it,
should answer, but anything outside of the gas business, or perta
ing thereto, or having nothing to do with the license or franch
from the city of Peoria he has a right to refuse to divulge in th
hearing.

The MASTER: I think, Mr. Irwin, you are in error in assumi
you have a right to instruct the witness not to answer; he is n
your witness and the witness in refusing to answer subjects hims
to contempt if the master's ruling is sustained by the court. As
whether he answers or not I think is a matter that should depe
upon his own volition.

Mr. IRWIN: I have not instructed the witness but simply i
formed him he has a right to refuse to answer. I give him th
advice as counsel for the complainant company and am willing
take the responsibility upon myself.

The MASTER: You don't have to take the responsibility ul
mately. The master has already indicated his opinion as to th
competency of this evidence. It seems to me unnecessary to repe
that I have no power to exclude it when the question is pressed a
I rule that the witness may answer subject to the objection.

A. I don't think I can answer the question without refreshin- m
memory from the records.

22. Will you refresh your recollection and be prepared t
1393 answer when subsequently called upon to do so?

Ans. Yes sir.

23. State whether or not the increase of capitalization made b
your company at that time was issued and, if so, to whom?

Objected to as incompetent and immaterial.

A. That I don't know without referring to the records.

24. State whether or not you of your own knowledge know tha
any of it was issued?

(Objected to same grounds.)

A. I think it was.

25. To whom was any such stock issued?

Objected to same ground as before unless it is confined to the gas
department of the business of the complainant company and also as
not the best evidence.

A. I can tell by referring to the books.

26. Cannot you tell without reference to the books?

A. Not in whole, I might in part.

27. How much of it was issued to you personally?

Objected to as incompetent and immaterial unless it is confined to the gas department of the complainant company.

A. I cannot state exactly but can give it to you exactly by referring to the record.

28. Have you in your possession, custody or control records showing how much of that stock was issued and to whom?

Objected to same ground as before.

A. I think the records of the company would show.

29. Are those records in your possession?

A. They are in the possession of Mr. Little, the general manager.

30. Are they in Peoria at the present time so far as you know?

A. So far as my knowledge goes.

31. Can you state from your own knowledge and recollection — to whether or not all of the increased capitalization, or cer-
1394 tificates representing all of the increased capitalization, were issued?

(Objected to same grounds.)

A. My remembrance is that it was.

32. State whether or not within your knowledge those certificates representing the increase were all issued to the then stockholders of the complainant company?

Objected to as incompetent and immaterial.

The MASTER: The witness may answer subject to the objection.

Mr. IRWIN: Does the master rule it is competent or does he adhere to his previous ruling. I would like to have a ruling or expression from the master as to the competency or incompetency of the question.

The MASTER: The master can see how this evidence might possibly become competent and material but I cannot say it will ever be so connected. I must, however, assume that counsel for defendant will be fair with the master and connect it so as to make it competent. I think the inquiry is competent, assuming as I do, that course will be followed by the city.

Mr. TICHENOR: We most certainly would not undertake to follow any course or plan calculated in the slightest degree to deceive the master or anybody else connected with the case.

Mr. IRWIN: I am surprised you would be so frank.

A. The records of the office will show that I think.

33. What is your recollection upon that question?

A. That they were.

34. Issued to the then stockholders at that time?

A. Yes sir.

35. What was paid by the persons to whom those certificates were issued for such additional stock?

Objected to as incompetent and immaterial.

The MASTER: I think it competent; he may answe
1395 ject to the objection.

A. I don't remember.

36. How much did you pay for such certificates as were issu you?

Objected to as incompetent and immaterial and asking private matter between the company and the witness.

The MASTER: Same ruling.

A. For the present I refuse to answer.

37. Do you refuse to answer the question propounded becau involves matters which might tend to criminate you?

A. No sir.

38. Do you know where the stock certificates representing capitalization of the complainant company are at the present t

Objected to as immaterial.

A. No, I do not.

39. Do you know where your own stock certificates for such tions of the capital stock as you yourself hold are?

Objected to as incompetent, immaterial and an attempt to inq into the private affairs of the witness.

The MASTER: I do not think that inquiry as to where they is material. Suppose they had been deposited by the witnes collateral to secure a loan, would it be competent to go into t I think the inquiry should be whether the stock certificates issued for value and whether they were issued *bona fide* to the sons named therein—whether they were paid for at par and whether the parties to whom they were issued are the present h ers and owners of them.

Mr. TICHENOR: That is what I am trying to find out.

The MASTER: Your question does not call for that informat The question is if he knows where his own stock is as to the creased capitalization. How is that material, Mr. Tichen
1396 Mr. TICHENOR: I think it is.

The MASTER: I think not, as to where they are but if desire to press the inquiry the witness may answer subject to objection.

Mr. TICHENOR: I would like to have the question answered.

The MASTER: The witness may answer subject to the objectio

A. I do.

40. Where are they?

Objected to as incompetent and immaterial and an attempt to quire into the private affairs of the witness.

The MASTER: I think so.

Mr. TICHENOR: I will withdraw the question temporarily.

41. State whether or not the certificates of stock, to which your attention has been directed, have been in any manner pledged or hypothecated to secure an indebtedness?

Objected to same grounds as before.

The MASTER: I think so; I do not think it competent.

Mr. TICHENOR: My question is propounded for the purpose of showing that is not a fact.

The MASTER: I do not think it material whether it is a fact or not; I do not think that line of inquiry competent. If you desire to press it the master will rule further.

Mr. TICHENOR: There is a very material element in the case which we cannot prove unless we can show where those stock certificates are and if we are permitted we can show there is not a single one held by a single one of the stock holders.

The MASTER: That is not the pending question at all. If you want to ask this witness whether he is the owner or holder of the stock certificates issued to him, ask him that question?

42. Are you the holder at the present time of the stock certificates representing the stock which you own in the complainant
1397 company.

Objected to as incompetent, immaterial, irrelevant and an attempt to inquire into the private affairs of the witness.

The MASTER: I think the inquiry should be whether or not he is the holder and owner of the stock certificates issued to him on the increased capitalization?

43. Are you the holder and owner of the stock certificates issued to you on the increased capitalization?

Objected to same grounds as before.

A. I am.

44. Do you hold those stock certificates in your individual or representative capacity?

(Objected to same grounds as before.)

The MASTER: I think it has already been answered in a previous answer.

45. Are you the holder and owner of your certificates issued on the original capitalization of complainant company?

Objected to same grounds as before.

A. No, I am not.

46. Who does hold those stock certificates?

Objected to same grounds, and also having nothing to do with the issues in this case.

A. I don't know.

47. Are you still the owner of those certificates?

(Objected to same grounds.)

A. I don't remember of them being issued, if they were I am not the holder.

48. Do you know where they are?

Objected to same grounds.

A. The records of the company would show.

The MASTER: The question is, do you know?
The WITNESS: I do not.

1398 49. The company's records will show, as I understand you, just where they are?

Ans. I think so.

50. Where will they be shown—in the secretary's book?

Objected to as incompetent and immaterial.

A. It will be shown in the records; so far as I know there is only one record of it.

51. You refer to the secretary's record, do you?

A. Yes sir.

(Witness excused for the present.)

MATHEW HENEBERY, called on behalf of defendant, being first duly sworn, deposes and says

Direct interrogatories by Mr. TICHENOR:

1. State your name and residence?

A. Mathew Heneberry, Peoria, Ill.

2. For how many years have you been a resident of Peoria?

A. About 53 years.

3. You were formerly interested in the Peoria Gas Light & Coke Co., were you not?

Ans. I was.

4. For — long a period of time were you interested in it and in what way?

A. Well, I must have been in the company 25 or 26 years; I was a director from the first year I went in and I afterwards got the name of treasurer.

5. How long were you treasurer of that company?

A. It must have been five years, I think.

6. State whether or not from your connection with that gas company for that period of time you became and were familiar with the business in a general way? I am not asking for the details of manufacture but simply with reference to the business part of it.

1399 A. Yes sir.

7. What was the condition of that company financially at the time you became interested in it?

Objected to as incompetent and immaterial.

The MASTER: That goes back to 1850.

Mr. TICHENOR: We are not going to spend very much time on it.

A. It was financially poor; the company was in debt when I ent into it.

8. Do you remember in a general way about how much the in-btedness amounted to?

Ans. $60,000.

9. Are you able to state from recollection what other Peorians came interested in the old company about the same time you ?

A. Mr. Robison was one; Mr. Herron was in when I went in and Jack was in; Peter Coffey was in and one of the Griswolds, thew or John Griswold, I think it was.

10. State whether or not your company, after you became asso-ted with it, discharged the indebtedness to which you have erred?

Objected to as incompetent, immaterial and inquiring into the vate affairs of the Peoria Gas Light & Coke Co. that is not terial to this inquiry.

The MASTER: I can see how it may be material. The witness y answer subject to the objection.

A. Yes sir, it did.

1. In what way was it discharged?

Objected to as incompetent and immaterial.

A. By paying the debt.

2. From what source did the funds come?

Objected to same grounds.

A. from the receipts of the gas company.

13. During the time you were connected with the company, state whether or not the buildings and plant were improved econstructed?

bjected to same grounds.

. There was really a new gas plant made; we built holders and run a 16 inch pipe from the gas works up town and took out 8 pipe which had about rotted out.

. From what source did the funds come used in the reconstruc-?

Objected to same grounds.)

. From the receipts of the gas work.

. State whether or not at any time during your connection with company it purchased any additional ground?

bjected to same grounds.

A. We purchased on two occasions.

16. What prices did you pay?

Mr. ABBOTT: Complainant objects to the question as incompetent, immaterial and inquiring into the private affairs of a company not a party to this suit and for the further reason that the Peoria Gas Light & Coke Co. has a suit pending in this court involving the validity and reasonableness of this ordinance as to it, and it certainly is unfair to it as a defendant in that suit to compel it now to disclose any facts however pertinent they might be in that suit.

The MASTER: The witness may answer subject to the objection.

A. The first purchase we made was of Mr. Robison; immediately after I went into the company we bought a lot next to the ground we had and several years after we bought from the Whiskey Trust folks the old Woolner property for which we paid thirty one thousand and some odd dollars, and for the property we bought of Robison we paid, I think, $6000, or $7000.

1401 17. State whether or not those items were paid in cash?

Objected to as incompetent and immaterial.

A. Yes sir.

18. Where did the fund come from?

Objected to same grounds.

A. From the earnings of the company.

19. State whether or not during the time you were connected with the company a water gas plant was installed there?

Objected to same grounds.

A. There was.

20. Do you remember about when it was and what it cost?

A. I remember about what it cost but I could not state the exact time.

21. What did it cost?

(Objected to same grounds.)

A. It cost, if I recollect rightly, thirty odd thousand dollars and the putting up of it cost forty odd thousand more; we bought the patent for $30,000, or thereabouts, and the building of it cost some $10,000; the water gas plant must have cost in the neighborhood of $70,000 or $75,000.

22. State whether or not that was paid for in cash?

Objected to same grounds.

A. That was paid for in cash.

23. From what source did those funds come?

Objected to same grounds.

A. From the gas company's receipts.

24. During all of that time was your gas company operating any other gas plant except the one in Peoria, Ill.?

A. No sir.

25. Had the company any other business during that time except the manufacture and sale of gas?

A. Not at that time, it did not.

26. State whether or not within the past four or five years the Peoria Gas Light & Coke Co. built a new retort house and installed a new system of retorts?

Ans. It did.

27. What was the expense of that item, if you know?

Objected to as incompetent and immaterial.

A. That was the last item of work done; my recollection is poor as to what it cost, but I think it cost up to $60,000; I am off on that, though it was the last thing we done.

28. Do you remember what year it was done?

A. It must have been done along in 1898 that we started it or 1899.

29. From what source did the funds for that improvement come?

Objected to same grounds.

A. They came from the earnings of the gas company.

30. State whether or not that gas company furnished any funds for the purpose of purchasing electric light stock at any time during your connection with it?

Mr. ABBOTT: We object to the question as incompetent, immaterial and inquiring into the private and confidential business of a company not a party to this suit.

The MASTER: I don't think that material.

Mr. TICHENOR: I would like to have it answered.

Mr. ABBOTT: I advise the witness as counsel for the witness and counsel for the Peoria Gas Light & Coke Co. that inasmuch as the question is not material to the inquiry in this case he may or may not answer it, as he sees fit.

Mr. TICHENOR: I think it very material and I believe if the witness is permitted to answer he will testify that a very large item of funds was furnished by the Peoria Gas Light & Coke Co. in the purchase of stock of the Electric Co., this purchase having been made a great many years ago.

The MASTER: You mean the funds accumulated from the earnings of the company while engaged in the gas business exclusively?

Mr. TICHENOR: Yes sir.

Mr. IRWIN: What can that have to do with the price of gas at the present time? In order to show it to be competent in any way, they would have to show the price of material at that time, the cost of labor, the cost of the company's plant at that time and the cost of

production, and the court will certainly not allow them to go back 15 to 20 years.

The WITNESS: This electric light plant we purchased I think about 12 or 14 years ago.

The MASTER: I think that evidence may become material under the issues in this case and the witness may answer subject to the objection.

Mr. ABBOTT: I desire to renew my advice to the witness as his counsel and as counsel of the Peoria Gas Light & Coke Co. that he may or may not answer the question as he chooses.

The MASTER: I don't think the question broad enough, Mr. Tichenor.

31. State whether at any time during your connection with the gas company, as you have stated, from and out of the earnings of that company it purchased any electric company's stock?

Mr. ABBOTT: I renew my objection on the same grounds as before and also my advice previously given to the witness.

The MASTER: The witness may answer subject to the objection.

A. Yes sir, the gas company bought $55,000. worth of electric stock; it was $100,000. and we bought a majority of it.

32. Out of what fund was that paid?

Objected to as incompetent and immaterial.

A. It was paid out of the gas company's office with the exception of a small amount we borrowed temporarily from Mr. Her-
1404 ron for maybe 30 days; that was paid for by the gas company out of its earnings and eight stockholders in the gas company got stock in the electric light company prorated as his interest was in the gas company.

33. State whether the gas company subsequently paid off this small loan you say it made?

(Objected to same grounds.)

A. Yes sir.

34. Was that paid out of its earnings?

Ans. Yes sir.

35. State whether or not during your connection with the Peoria Gas Light & Coke Co. the company at different times carried any loans for the purpose of using its surplus capital?

Objected to as incompetent, immaterial and inquiring into the private affairs of that company which has no relation or materiality in this case.

A. Yes sir, we carried considerable loans at one time.

36. Do you remember at this time substantially what the amount was?

(Objected to same grounds.)

A. No, I do not, but I know we had as much as $50,000 at one time on loans.

37. From what source did the funds come which you invested in those loans?

(Objected to as incompetent and immaterial.)

A. From the earnings of the gas company.

38. That was the only gas company you were ever associated with, was it?

A. Yes, and I am sorry it didn't last longer.

39. You may state what if any dividends were paid by your company during the time you were connected with it?

Mr. ABBOTT: We object to the question as incompetent, immaterial and an inquiry into the confidential affairs of the Peoria Gas Light & Coke Co. and its stockholders and is not in any way pertinent to the issues in this case.

1405 The MASTER: I do not think, Mr. Tichenor, I will permit you to go into that inquiry for an unlimited period; I think you should confine the inquiry to say within 5 years of the time of the filing of the bill in this case or prior to the time the old company shut down its works.

40. State whether or not in the year 1897 the Peoria Gas Light & Coke Co. paid any dividends to its stockholders?

Mr. ABBOTT: Complainant objects to the question as incompetent, immaterial and inquiring into the private affairs of a company not a party to this suit and I advise the witness as his counsel and counsel of the Peoria Gas Light & Coke Co. that he need not answer the question if he sees fit not to do so.

The MASTER: Answer subject to the objection.

A. Yes sir, it did.

41. What amount?

(Objected to same grounds.)

A. I don't know; they paid 10 per cent while I was connected with it every year but one year but whether that was 1897 or not, I could not say. I may have a memorandum that will refresh my memory. (Witness referring to papers.) I find on July 1, 1897, I drew $8,595, as my share of the gas dividend, which would be $15. per share.

41. State whether or not during that year the company declared any dividends?

(Objected to as incompetent and immaterial.)

A. They did, I think; the regular quarterly dividend was paid right along with the exception of this July 1, 1897.

42. What was that regular quarterly dividend?

Objected to same grounds.

A. 10 per cent. per annum payable quarterly, but on the oc
of paying this $15. per share they didn't pay anything more
quarter.

1406 43. What was the par value or face value of the sha
stock in that company?

(Objected to same grounds.)

A. They were $50. a share.

44. State whether or not the company continued to pay a 1
cent. dividend as long as you were connected with it?

Objected to same grounds.

A. It did.

45. When did you dispose of your interest in that company
all?

(Objected to same grounds.)

A. Well, when the majority of the company sold out; that
have been in 1898 or 1899. I have a memorandum of it
(Witness referring to memorandum.) My memorandum is wo
out on April 28, 1900.

46. How many shares did you own at that time?

Mr. ABBOTT: Complainant objects to the question as incompe
immaterial and calling for confidential relations between this
ness and the Peoria Gas Light & Coke Co. and asking for the pri
affairs of that company and as to his holdings of stock and
price he gave for it is a matter entirely immaterial in this case,
as counsel for the witness and as counsel for the Peoria Gas L
& Coke Co. I advise him he need not answer such questions u
he sees fit.

The MASTER: The witness may answer subject to the objectio

A. My answer to that is 645 shares.

47. At what price did you sell those shares?

Objected to same grounds.

A. My shares came to $218.34 per share.

48. State whether or not at any time prior to the time you
actually sell your company could have sold out for more mo
than was actually received at that time?

Objected to as incompetent, immaterial and calling for a c
clusion and speculation.

1407 The MASTER: I think so, I don't think it competent.

Mr. TICHENOR: I would like to have the witness answ

The MASTER: He may answer subject to the objection.

A. The majority of the stock, yes sir, could have been sold a
good deal more money.

49. How much more money, if you remember?

Objected to same grounds.

A. Well, about $50,000.

50. That was for the majority of the stock?

A. Yes sir; the financial part was very badly managed to wind up on.

51. Do you know what salary the president of your company received during the last 5 years of your connection with it?

Objected to as incompetent and immaterial.

The MASTER: I think it material and competent, he may answer.

A. $5,000 per annum is my understanding.

52. State if you know what the secretary of the company received during that time?

(Objected to same grounds.)

A. He drew $3,000 per annum.

53. State what salary was paid any other officer of the company, if you know?

(Objected to same grounds.)

The MASTER: You had better find out first whether any salaries were paid.

54. Was any other officer of the company paid a salary during any part of that time?

(Objected to same grounds.)

A. Yes sir.

55. Who?

Ans. Your humble servant drew $1,000 per annum.

56. Do you remember for how many years?

Objected to same grounds.

A. About 5 years, I think.

57. That is, 5 years prior to the time the majority of the 1408 stock was sold?

Ans. Yes sir.

58. Had that been the case with the other salaries to which you have referred?

(Objected to same grounds.)

A. Yes sir, it was from the time of Peter Coffey's death. These salaries were changed and I drew a thousand.

59. The other salaries were all the same after his death?

Objected to same grounds.

A. They were all raised, I believe after Peter Coffey's death.

60. Did the remainder of the stock that was disposed of at the same time you sold yours realize the same or a different price?

(Objected to as incompetent and immaterial.)

A. I don't know anything about it.

61. Can you state from recollection about when Peter Coffey died?

A. No, I cannot very well but he must be dead now about 6 or 7 years; it would be in 1896, maybe.

62. At the time you disposed of your stock, what portion of the territory in Peoria and tributary thereto was supplied with gas by your company so far as pertained to furnishing it at a profit?

Objected to as incompetent and immaterial.

A. I could not answer that.

63. During the time that you were connected with the Peoria Gas Light & Coke Co., state whether or not it ever had any indebtedness except when you first went in and when you made the small loan to which you have referred at the time of the purchase of the electric light stock?

(Objected to same grounds.)

A. It never had any indebtedness but the one when I first went in the other loan was a mere temporary affair for 30 days, maybe, and was only for a small amount.

64. State whether or not the company had any surplus at the time you disposed of your stock? If so, how much?

1409 Objected to same grounds.

A. Yes, sir, it had some $80,000. we agreed to turn over.

65. From what source had that $80,000. been made?

Objected to same grounds.

A. From the gas company.

66. State whether or not the dividend declared July 1, 1897, of $15. per share still left a large or only a small surplus?

Objected to same grounds and also as not the best evidence.

A. Oh, it left considerable on hand.

67. Do you remember in the neighborhood of how much?

Objected to same grounds.

A. I could not say now, may be $50,000. it was hard to run the company out of money those days, they were making it so rapidly.

68. State whether or not about the time, or shortly before you made the sale to which you have referred, your company purchased a considerable quantity of material to be used in connection with the gas company?

(Objected to as incompetent and immaterial.)

A. Yes sir, they bought a large amount of iron pipe.

69. Do you remember substantially the cost of it?

Objected to same grounds.

have an idea but I could not exactly tell; it was a large
t, though.
State whether or not your company paid for that before this
r to which you have referred?
Yes sir.
And after that was paid, it left the surplus which you have
ned, did it?
cted to same grounds.)
Yes sir, the parties purchasing got the $80,000.
And they received that, did they?
cted to same grounds?
Yes sir.
73. State whether or not the purchasers also received this
large quantity of material to which you have referred?
cted to same grounds.
Yes sir, they received everything belonging to the company.
What was the character of this retort house and its equip-
which you state was built in 1898 or 1899 with reference to
modern or otherwise?
Well, I know nothing about the modern part of it but that was
culation; Mr. Coffey went on down into Ohio and went around
ral places and got plans and came back with the intention of
up the latest he could find.
plainant objects to the answer with reference to what Mr.
aid or what his intention was as incompetent and immaterial
ves the court to exclude it.
Do you know what the price of fuel gas furnished by your
ny had been during five or six years preceding your sale, as
ve testified?
cted to as incompetent and immaterial.
5 cents a thousand.
Do you know the circumstances under which that reduction
ade as to whether it was voluntary or involuntary?
cted to same grounds.
All voluntary on the part of the old company.
Was that the case with reference to all the reductions in price
re made by your company during the time you were con-
with it?
cted to as incompetent and immaterial and calling for a con-
.
MASTER: Counsel is asking for a fact not for conclusions.
Yes sir, it was all done voluntarily by the company, from

$3.50 per 1000 for illuminating gas when I went in to $1.5
1411 per thousand when I quit.

78. Do you know in a general way what proportion of all the gas you were furnishing at the time of the sale, or shortly before, was fuel gas and what was illuminating gas?

A. I do not.

79. During the time you were connected with the Peoria Gas Light & Coke Co., where did it keep its bank account?

Objected to as incompetent and immaterial.

A. It kept its account at Herron's savings bank the first part of the time and after that the account was moved to the First National Bank of Peoria: Mr. Herron used to be treasurer and when I got to be treasurer I took the account to the First national bank; when he was treasurer he kept it at his bank.

Cross examination by Mr. ABBOTT:

1. Do you remember the year in which you became a stock holder in the Peoria Gas Light & Coke Co.?

A. I do not positively but think it was about 1874 or 1875.

2. And did you enter at once into an active participation in its affairs?

A. After I was elected a director I became one of its principals.

3. About when were you elected a director?

A. I think it was about 1874 or 1875, shortly after I became a stock holder, and I became a stock holder the very day the majority changed to Mr. Robison's and Mr. Coffey's hands, or rather the following day I bought some stock but I did not get in until the next meeting.

4. At that time, you entered upon an active participation in its affairs, did you?

Ans. I did.

5. Did that continue during all the time you were a stock
1412 holder?

Ans. All the time.

6. Do you remember at what price the Peoria Gas Light & Coke Co. was selling gas when you first became a director and stockholder in the company?

A. To the best of my recollection it was $3.50.

7. Do you remember how long that rate continued?

A. I don't remember how long but it was only a short time.

8. When it was reduced, to what price was it reduced?

A. I think it was to $2.50.

9. Do you remember how long the rate of $2.50 continued?

A. I could not tell you.

10. When it was next reduced, to what price was it reduced?

A. I think $2.00 then for a while.

you remember how long the $2.00 rate continued?
o not.
hen it was then reduced, to what price was it reduced?
25.
u don't remember just when that was?
do not.
at rate of $1.25 continued as long as you were connected
company, did it not?
It did.
hat was the character of the management at the time you
a stockholder and became interested in the company and
had the indebtedness, of which you have spoken, as to being
cal and business like or otherwise?
ell, a new management altogether took hold of it then and
a very satisfactory one; Peter Coffey took hold.
mean at the time you first became interested?
s, when we were owing $60,000.
hat had been the character of its management prior to that

I don't know anything about that.
18. At the time you became interested in the company,
hat was being done, if anything, with regard to saving the
ar as a by-product?
e used to save some of it but the most of it was run into
r.
hat change was made, if any, in the saving and selling of
by-product after you became interested?
ell, they sold some tar right along but very little; then they
an ammonia works to use the balance of them.
hat was done, if anything, during the remainder of the
f your connection with the company with regard to saving
and ammonia and selling them as by-products?
y recollection is the experience was a very profitable one,
d a man making ammonia there all the time and it was sold
y good advantage.
ou mean after your connection with the company they began
the tar and ammonia and sell it at a good price?
es, that is right.
id they also during the period of your connection with the
y sell the coke as a by-product?
es sir, they did.
o a considerable portion of the income of the property dur
time you were connected with it arose from the saving and
of the by-products of coke, tar and ammonia?
hat is right.
low long did the rate of $3.50 per thousand continue?
ot very long, it might have been a year after I went in I
give you the date.

25. Do you know how long it had been at that rate before you became interested in the company?

A. I do not but I believe my understanding was that was the rate established when they first built the works.

1414 26. That had continued then at that rate from the time the works were established until about a year after you become connected with the company?

A. I could not say as to that for I was not posted on what they charged before.

27. When did you first become a consumer of gas?

A. It must be thirty years ago or more.

28. It was some years before you became a stock holder in the company?

Ans. Yes sir.

29. And during the time you were a consumer of gas, but was not interested in the company, was that the rate you paid?

A. I could not say now what I was paying.

30. Did you ever pay less than $3.50 up to that time?

A. I could not say what I paid, whether it was more or less.

31. Was that regarded as a reasonable rate at the time you became interested in the company under the conditions then existing?

Ans. I don't know anything about that.

32. When the change was made to $2.50, was that regarded as a reasonable rate under the conditions then existing?

A. I think we were following up the Chicago prices then.

33. Was it regarded as a reasonable rate by the directors and stock holders of your company?

Objected to as immaterial, incompetent and not cross-examination.

The MASTER: I don't think it is material or proper cross-examination.

Mr. ABBOTT: We wish an answer to the question.

The MASTER: The witness may answer subject to the objection.

A. I presume it was at the time.

34. Under the conditions then existing was $2.50 a reasonable rate for illuminating gas at that time?

1415 Objected to same grounds.

The MASTER: Same ruling.

A. I should think so.

35. What was the rate of interest on investments of capital generally at that time that was regarded as proper and usual in and about the city of Peoria?

A. Well, I supposed that varied from 8 to 10 per cent.

36. That was for general loans on farm and city property at that time?

A. Yes sir at that time on city property and farms 8 or 10 %.

After your company began to save the tar and sell it as a by-
t, do you remember what price was obtained for it?
No, I could not tell now.
Do you know how it compared with the price at present?
do not.
Do you remember what price you received for ammonia at
me?
No, not exactly, I remember one thing what we used to get
load of it; we used to ship in bulk.
How much was that?
We used to get $1,000 to $1,200, according to the size.
Do you know how much was in a car load?
No sir.
Is it not a fact that the price of both tar and ammonia were
erably higher then than they are today?
don't know that.
Do you know what amount had actually been i ted in the
y at the time you became a stock holder?
cted to as incompetent, immaterial and not cross examination.
The MASTER: I think it proper cross examination in view
of the fact its earning power and the indebtedness that ex-
isted was shown on direct examination.
No, but the amount invested and the stock are two different
the amount of stock was so much and all new work they
was charged too.
The question has no reference to the amount of stock.
should think maybe $300,000.
Do you know what the property was actually worth at the
ou became a stock holder?
was worth very little.
What was it worth at the time you surrendered your hold-
stock?
should think it was worth a million dollars in my estimation.
What was the amount of stock at that time?
150,000.
Do you know what the amount of the investment was at
me?
think it run up as high as $600,000.
thought from your answer you did not understand my
n. I did not refer to the price realized from the sale of the
ut what the actual amount of cash invested in the plant
to that time, irrespective of the amount of stock?
hat is what I have reference to; I think it would run up to
0 or $500,000; we built new works, made new improve-
wherever we took out pipe put in there and repaired it that
charged to anything but when we put a new holder in that
rged up; I think it footed up over $500,000.

50. You put in a considerable amount of new improvements shortly after you became a stock holder, did you not?

A. During my term we did.

1417 51. Was not there a substantial renovation of the entire plant while you were a stockholder?

A. It commenced shortly after I came in and was done while I was connected with the company.

52. It was shortly after you became connected with the company that a considerable amount of improvements were made?

A. Yes sir, very shortly afterwards they started at the gas works and run a 16 inch main.

53. During your connection with the company, the plant was entirely rebuilt, was it not?

Ans. Yes sir.

54. And another retort house was built in 1898 or 1899?

A. Yes sir, that was the last thing done, I guess.

55. Do you know how many times the benches of retorts were rebuilt in the 18 or 20 years you were connected with the company?

A. I think they were repaired, got new benches, I think, about three times in 20 years—two or three times.

56. I think you said at the time you surrendered your holdings there was about $150,000. worth of stock outstanding?

A. $175,500. was the capital stock; I was mistaken before in saying it was $150,000.

Re-direct interrogatories by Mr. TICHENOR:

1. Do you mean to say that at the time you became a stock holder there had already been invested in the plant by your predecessors in the neighborhood of $300,000.?

A. I rather think that is high, come to think of it.

2. You had no personal knowledge of what had been invested had you?

Ans. None whatever.

3. I understood you to say on cross examination that at the time you sold out in your opinion the property was worth a million dollars—upon what did you base that estimate?

1418 A. On its earnings; I did not say it was worth a million dollars on our books; I think we carried from $500,000. to $600,000. for new improvements.

4. But your answer was based on its earning capacity?

A. My answer was based on what it was making.

5. When you say it was carried at something like $500,000. do you mean that all the various items of improvement which had been made during the 25 years or so you and your associates had been interested in it had been charged up to the plant and that is how you made up that item?

A. That is how that item was made up.

6. Did that include also the valuation of the plant at the time you first took possession?

Ans. Oh, no.

The MASTER: He means by that, did that include the purchase price of the plant?

The WITNESS: There were very little improvements when we got hold of it; to make it plainer to you, the stock sold for $40. a share at the time Coffey and Robison got in; that was what the principal part of the stock that changed hands at that time sold for; at that time I said it was maybe worth $300,000.; there was little there because they had but one lot and after we got in the first thing we done was to buy another lot from Robison and we kept buying and improving after that, and all the new improvements were charged up to construction account or something else and any repairs we made went in without any charge.

7. But all new work in construction went into this item of $500,000.?

Ans. Yes sir.

8. And that had been done during the 25 years or more you were connected with it?

A. Yes, that is right; I think that item was between $500,000 and $600,000.

1419 9. Is it not true that when this tar as a by-product first began to be saved it had very little value because of the fact that its commercial uses were very limited and people didn't know how to use it or what it was valuable for?

A. I could not say as to that.

Re-cross interrogatories by Mr. ABBOTT:

1. If I understand your answer correctly on re-direct examination, at the time you became a stockholder the plant was in a very bad state of reairs?

Ans. Yes sir.

2. There was practically nothing there to work with?

A. That is right.

3. And almost immediately and within a few years the entire plant was removed?

Ans. Yes sir.

4. And is it not a fact that since that time it has been again substantially renewed throughout during your connection with the company?

A. We were continually making improvements.

5. And have not those improvements been of such a character and to such an extent as to practically renew the entire plant again during your connection with the company?

Ans. Yes sir.

6. Do you remember how much stock had been issued at the time you became a stock holder?

A. I said $150,000. before but I was certainly mistaken about that.

7. Is it not a fact that at the time you became a stockholder only $150,000. of the stock had been issued and the other $25,000. of stock was issued during your connection with the company?

A. Not to my knowledge, no; whatever they issued must have been issued at that time.

1420 8. Are you sure of that?

Ans. I am not.

9. It may be that it was only $150,000. at that time and that the $25,000. was issued subsequently?

A. It may be; I did not have much to do with that until lately.

10. You were not interested particularly in that part of the business?

A. No, I became more interested in the last few years of my connection with the company than before.

11. To refresh your recollection, I will ask you if it is not a fact that at the time you became a stock holder the stock then issued amounted to about $150,000. and that $25,000. additional was issued afterwards at about the time you rebuilt the plant?

A. Not to my knowledge. I don't recollect about that.

12. You would not say that is not so, would you?

A. Yes, I would, because I would surely have had an opportunity to have bought some of it if there was anything of that kind going on, and I never had that opportunity or never heard of it, but it might have been done by the powers that be who were running it; Robison can perhaps explain that better than I can; my impression is all that was issued was issued when I bought in, but I was certainly mistaken as to the amount before.

Re-re-direct interrogatories by Mr. TICHENOR:

1. Were not many of the improvements to which you have referred necessary because of the increase in the size of the city and the additional demand for gas?

Ans. Yes sir.

2. That was true in regard to replacing the mains you have mentioned?

A. That is true, we had applications at every meeting.

3. That also made necessary the increasing of your holder capacity, bench capacity, etc.?

Ans. That is right.

1421 (Mr. ABBOTT:)

Q. Is it not also a fact that many of these repairs and replacements were made because the old property was worn out and unfit for use?

Ans. Yes, that is also a fact.

LESLIE ROBISON, called on behalf of defendant, being first duly sworn, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. State your name and residence?
A. Leslie Robison, Peoria, Ill.
2. How long have you resided in Peoria?
A. About 43 or 44 years.
3. Were you at one time interested in the Peoria Gas Light & Coke Co.?
Ans. Yes sir.
4. When did you acquire an interest in the company?
A. It was either in May, 1874, or 1875, I cannot be positive, but it was just a little before Mr. Henebery, the preceding witness, became interested in the company.
5. For how long did you continue to be interested in the company?
A. I sold the last of my stock about a couple of years ago.
6. During that period, what if any official position did you hold in that company?
A. I was a director from the time I became a stockholder until I think 1888 and was president of the company some half dozen years; I was president of the company in 1888, 1889 and 1890, along in there somewhere; when we bought the electric light company I was president.
7. State whether or not during your connection with the company you acquired a knowledge and familiarity with its affairs in a general way, at least, so far as pertained to the business part of
1422 it, its profits, etc.?
A. From looking into it and managing it and from the reports at monthly meetings I became somewhat acquainted with it.
8. State whether or not you regularly attended the directors' meetings during the time covered by your previous answers.
A. Nearly always.
9. State whether or not within your recollection the company had an indebtedness at the time you became interested in it?
Objected to as incompetent and immaterial.
A. It was in debt about $60,000. as I remember; it was $50,000. or $60,000, I don't remember exactly.
10. State whether or not that indebtedness was subsequently paid by that company?
(Objected to same grounds.)
A. Yes, it was subsequently paid off out of the earnings of the company.
11. Do you remember at this time about what the population of Peoria was when you became interested in the company so far as pertained to the territory available for furnishing gas profitably?

Objected to as incompetent, immaterial and calling for a conclusion.

A. I never made an estimate on that; not much over half of the population of the city had the blessing of gas at that time in 1874 or 1875.

12. Who else became interested in that company about the same time you did?

(Objected to as incompetent and immaterial.)

A. They were interested at that time but they became directors at that time—new men; they were interested before, all of them except myself.

13. Do I understand you to say that Mr. Henebery was interested then?

A. No, he was not then but the very next day I under-
1423 stand he bought his stock.

14. Who was superintendent of the company during the time covered by your connection with it?

A. Peter Coffey except semi-occasionally when he was absent then it was Thomas Coffey.

15. Those were short temporary absences?

A. Yes sir, rather short.

16. Owing to ill health?

A. Peter Coffey went to Europe once—traveled a little.

17. State what in a general way the company first did in the way of reconstruction and what was the reason for its necessity if any such existed?

(Objected to as incompetent and immaterial.)

A. The very first thing was to stop the leaks in the mains—there was a very large leakage; then we repaired the benches.

18. What was done for the purpose of stopping the leakages?

Objected to same grounds.

A. We put down some new pipes and we probed the ground all over the whole city nearly with crowbars to discover the leaks and then dug down and stopped them; the leakage when we went in was something like 22 per cent. from the output at the meter at the works—it was enormous.

19. What other improvements were made during the time of your connection with the company?

(Objected to same grounds.)

A. We constructed a cistern to hold the tar; we could not sell the tar just as it was made so we constructed a large cistern to hold tar and we took an old holder and converted that into a tar holder where we held thousands of barrels, then sold it when we got a market for it; we overhauled the benches pretty thoroughly; we built a new purifying room—a new building that is there yet.

20. It was still in service was it when you went out?

1424 A. It is in service now, I guess, at least it was when we went out. We built an ammonia plant; we built a large gas holder that cost fully $50,000.; repaired another one, put another lift on it, and bought some ground.

21. Do you recollect at this time what your ammonia plant cost you?

(Objected to as incompetent and immaterial.)

A. I think it cost about $7,000. The next largest improvement was we bought this oil gas plant at a cost of $31,000. some hundred dollars and then spent nearly $50,000. in putting the machinery in for it.

22. What was the first outlay of $31,000. for?

A. The right to use the patent.

23. Did you participate in the negotiations which resulted in a purchase of the right to use that patent?

A. Yes sir, Mr. Henebery, Mr. Coffey and myself went to Bloomington to see it work. It had recently been put in there.

24. I understand you to say that the total outlay for placing the water gas plant or oil plant, to which you have referred, was about $80,000.?

A. I think it was about $80,000.

25. State whether or not during the time you were connected with the company any additional ground was purchased?

Objected to as incompetent and immaterial.

A. Shortly after I became a director they purchased through me—it was Col. Balance's lot—I sold it to them for $6,000. or $7,000.—I don't remember the exact price, and after that we bought the old Union Distillery lot for something like $31,500.; that was a number of years afterwards.

26. State whether or not during that same period, being the one covered by your connection with the company, it purchased an interest in the electric light plant in Peoria?

1425 Objected to as incompetent, immaterial and irrelevant.

A. The gas company purchased the controlling interest in the Peoria Jenney Electric Light Company afterwards the name being changed to Jenney Electric Company.

27. Do you know how much cash it paid for that interest?

Objected to same grounds.

A. My recollection is it was $55,000.

28. Do you remember about when that was purchased?

Objected to same grounds.

A. Yes sir, it was done about 1887—maybe 1886.

29. From what source did the funds for all these various items you have named come?

Objected to as incompetent and immaterial.

A. From the earnings of the Peoria Gas Light & Coke Co.

30. State whether or not during your connection with the company it ever had any debts other than the one to which you have referred when you first became connected with it?

Objected to as incompetent and immaterial.

A. We may have temporarily borrowed a few thousand dollars at the time we bought the stock in this electric light company—we may at that time have borrowed temporarily out of bank a few thousand dollars but it was very soon paid off.

31. State whether or not at the various times those improvements and purchases were made they were paid for in cash from and out of the funds of the Peoria Gas Light & Coke Co.

Objected to same grounds.

A. Certainly they were paid in cash out of the earnings of the company.

32. State whether or not during the time you were connected with the company, in addition to the various items to which you have referred, the company also paid dividends?

1426 Objected to same grounds.

A. My recollection is we always paid quarterly 2½%, that is 10 per cent. a year except one year when we paid 37½ per cent. dividends.

33. Do you remember in what year you paid the large dividend to which you refer?

A. I think it was 1896 or 1897.

34. Do you remember whether or not you were president of the company at the time that large dividend was paid?

A. I don't think I was.

35. At the time you severed your connection with the Peoria Gas Light & Coke Co., by the sale of your stock, state whether or not the various improvements, concerning which you have testified, were still there and in use, or in condition for use?

Objected to as incompetent and immaterial.

A. I understood they were all in good order in use.

36. State whether or not during a portion of that time the water gas plant, so called, to which you have referred, was in operation?

(Objected to same grounds.)

A. We sometimes shut that down for repairs or something of that kind but it was operated all the time substantially. In fact, we lit the city here for months from that plant alone without any coal.

37. What was the object in putting that plant in, if you know?

Objected to as incompetent, immaterial and calling for a conclusion.

A. It was to make gas cheaper and better: the water gas was used to enrich the coal gas and make it cheaper and better.

38. State whether or not during any portion of the time you were connected with the company it was carrying any loans?

Objected to as incompetent and immaterial.

A. It was.

1427 39. From what source did the funds come for the purchase of those loans?

(Objected to same grounds.)

A. From the earnings of the company.

40. Are you able to state whether loans were carried for any considerable length of time, or at different times, or was it only limited to a few occasions?

(Objected to same grounds.)

A. We put our money out at different times so it might be earning something.

41. Have you any recollection at this time how large an amount of loans that company was carrying?

Objected to same grounds.

A. I think about $50,000. was the largest.

42. Do you know what salary the different officers of the company were receiving during say five years preceding October 24, 1901?

(Objected to as incompetent and immaterial.)

A. Yes, I know.

43. What were some of those salaries?

Objected to same grounds.

A. During the last years we were paying the president $5,000. per year; the secretary got $3,000. per year I think at one time, and the treasurer got $2,000. per year. I think those are the largest salaries I had anything to do with.

(The MASTER:)

44. For how many years prior to October 24, 1901, had those salaries been paid?

A. Not very many; I think for 5, 6 or 7 years, though.

(Mr. TICHENOR:)

45. Prior to the time you severed your connection with the company?

Ans. Yes sir.

46. Judging from the knowledge acquired by you during your connection with the company, as you have testified, have you an opinion as to the value of the property of the Peoria Gas Light & Coke Co. at the time you severed your connection with it,
1428 based upon its earning capacity?

A. I think I could make an estimate of about what it was worth.

47. What in your judgment was it worth at that time?

Objected to as incompetent, immaterial and because no proper foundation has been laid.

A. I think it was worth a million dollars; I agree with Mr. Henebery on that.

48. You had disposed of your interest, had you not, before the majority of the stock was sold as testified to by Mr. Henebery?

(Objected to same grounds.)

A. Not all but all except a few shares; I had a few shares after the new management went in.

49. Do you know what the surplus on hand was at the time the new management went in?

(Objected to as incompetent and immaterial.)

A. Of course, I have heard but I do not know of my own knowledge; I was not a director at that time.

Cross interrogatories by Mr. ABBOTT:

1. When did you sell the first of your stock?

A. Probably 6 or 7 years ago.

2. When did you next sell any part of it?

A. The last few shares I had left were sold after the new management came in.

3. There was but one sale in connection with the sale of the stock to the new management?

Ans. That is all.

4. When was that?

Ans. I don't remember the date.

5. Was it after the People's Gas & Electric Co., now the Peoria Gas & Electric Co., had organized and commenced doing business in the city of Peoria?

A. They were either building the works or making gas at that time, I don't remember which.

1429 6. At that time there was competition or active threats of competition in the gas business?

A. Yes, I think so, or going to be.

7. What effect did that have on your willingness to sell your stock?

A. It would depreciate the value of the stock, that is, a fight on prices would affect the dividends.

8. You anticipated at that time a fight on prices, did you?

A. I did not care so much about that as I only had 3, 4 or 5 shares.

9. (Interrogatory 8 repeated to witness.)

A. I did.

10. Did you continue to be an officer up to the time you made the final sale of your stock?

Ans. No sir.

11. When did you cease to be president?

A. Early in the '90's—1891, '92 or '93 sometime.

12. Were the salaries you have stated paid to the officers while you were president?

Ans. No sir.

13. What salaries were being paid at that time?

A. I don't remember certainly, I think the president only got a thousand dollars, the secretary $2,500. and the treasurer a very little, if anything.

14. Was that the scale during the entire time you were president?

Ans. I think so.

15. Do you know what scale of salaries were in effect at the time of the sale of your last stock?

A. The old administration was out when I sold my last stock and the new one was in; I don't know what they paid the officers.

16. What salaries continued to be paid, if you know while Henebery, the Coffey's and Farrelly continued in the active management of the property?

1430 A. I think I was out one year before—my understanding is it was paid until they sold out.

17. Those were the salaries that were being paid at the time you retired from active participation in the company?

A. Yes, according to my understanding.

18. What was the property worth in your judgment at the time you first became a stockholder?

A. Well, the stock, as Mr. Henebery told you, was sold for $40. for a $50. share, and the capital stock was $175,500.

19. You have had considerable to do with real estate in the city of Peoria, have you not?

Ans. Yes sir.

20. And are reasonably familiar with the values of property generally in the city and have been for the last 40 years?

A. In some parts of the city.

21. In the business part of the city?

A. Yes and in that territory down there where the old company's plant is I was particularly familiar with it.

22. What, in your judgment was the value of its physical property, its manufacturing plant, mains, services, meters and its entire equipment at the time you became a stockholder?

A. I think the property was worth par at that time, that is $175,500., although the stock sold for a little less.

23. What was the physical condition of the property at that time?

An. It was in a very poor condition.

24. The plant was substantially renewed and replaced in the course of a very few years, was it not?

Ans. Yes sir.

25. From the fact it had become unfit for use?

A. Not quite unfit but it was in a bad condition; the mains were leaking badly—Interrupted.

26. Do you know what the percent. of leakage was when you took hold of it?

Ans. I think it was about 22 %.

1431 27. Do you recollect what per cent. of leakage there was after it was rebuilt and renewed?

A. I know before I went out it was down to about 10 %.

28. Was that about what it continued while the plant was in active operation?

A. From 10 to 12 %, that is condensation and leakage, you understand.

29. What other changes and improvements in the plant were made during the time you were interested in the company in addition to those made the first year or two?

A. We were from year to year putting in larger and new mains at a great expense—that was perhaps the largest expense we were at.

30. What changes were made in the manufacturing plant proper?

A. I have told you we put in an oil plant that enabled us to make gas cheaper and better, we also purchased second pool Youghiogheny coal which produced a coke and tar and an ammonia that was not produced by the Illinois coal they had used before I went in, that is not in large quantities, that is, a little coke but not much and a very poor quality.

31. Was not the entire plant substantially rebuilt and renewed after the rebuilding that took place when you first became interested?

Ans. Yes sir.

33. How frequently were the benches of retorts renewed during the time?

A. A bench wears only about two or three years and we were constantly renewing benches; sometimes we would overhaul the whole system of benches, but we were constantly renewing some of the benches every year; I think I used to say they were like horses, they would wear just so long and burn out.

34. That is renewals had to be made from year to year to

1432 keep the plant in efficient operation?

Ans. Yes sir.

35. Is it not a fact that at the time you speak of loans being made

from the surplus that the company chose to make those loans instead of paying out the money as dividends in order to have a fund to make these renewals from year to year?

A. We always had money enough to make those repairs without lay- funds away *fro* it, but I will tell you what we did do, we did not effect any insurance; the insurance rate was very high and we always wanted to keep $50,000. on hand in case we had an explosion or something of that kind.

36. Did you not keep money on hand at all times for the necessary renewals and repairs and to cover the risks of explosion and other risks incident to the business?

Ans. We did.

37. Why was it then that this money was put out as a loan instead of being paid out as dividends?

A. We wanted to keep enough to provide against accidents.

38. And the amount you kept on hand all the time you regarded as a proper and legitimate amount to keep on hand for that purpose?

A. Mostly so.

39. What was the value of the property at the time you sold your final holdings?

A. That was only a couple of years ago; at that time I estimated the value of it at one million dollars.

40. On what basis did you consider that property worth a million dollars?

A. Its earning capacity.

41. Its earning capacity on the basis of having a monopoly of gas service or a basis in view of the future considering the fact there was likely to be competition?

A. I should say it was on the basis of having a solitary plant; I think that competition would depreciate it.

1433 42. To what extent, in your judgment, would its value have depreciated if another plant of substantially the same size and capacity were erected in the city?

Objected to as immaterial and not cross examination.

A. I could not give an estimate of how long the fight would continue.

43. The fact that there was competition, however, would have a material effect on the value of the plant as it then stood, would it not?

Ans. I think so.

44. You were influenced by that consideration in disposing of your stock, were you not?

A. I disposed of all my stock except three or four shares or something like that before there was any competition.

45. Did you dispose of that on the basis of a million dollars valuation of the plant?

A. I don't remember what I got for those few shares but I did not get so much as I did on the first sale.

46. Do you know approximately what you got?

A. I do not, I had only three or four shares.

47. Was not the property worth as much at that time as it was two months before?

A. Its intrinsic value was exactly.

48. Was it not of equal value from the standpoint of its earning capacity?

Ans. No, I think not.

49. Why not?

Ans. Because there was sharp competition, selling gas at what I considered ruinous prices.

49. And that you would consider depreciated the value of your stock?

Ans. Yes sir.

50. That was one of the reasons you were willing to sell your remaining holdings?

A. That was not the moving cause; the main cause was
1434 the shares were too trifling for me to have anything to do with.

51. Suppose you had had $50,000. in shares at that time, would it have been a consideration for you to sell that stock?

Objected to as incompetent.

A. I think it would have depreciated the price.

52. It would have had an influence on your mind in determining the price you would be willing to take for the stock, would it not?

Ans. I think so.

53. You were a consumer of gas in the city of Peoria before you became interested in the Peoria Gas Light & Coke Co., were you not?

Ans. I suppose I was in my office and in my house.—oh I was always a consumer of gas, I think.

54. Do you know the price that was being charged by the Peoria Gas Light & Coke Co. when you became a stockholder and for some years previous?

A. The old management was charging $3.50 per 1,000 and 25 cents per month meter rent, whether gas was used or not.

56. How long did that charge for meter rent continue?

A. Not very long.

57. How long did the $3.50 rate continue?

A. Not very long; it was reduced in the first year after I became a director I think.

58. To what price was it reduced?

A. I cannot remember when we reduced it nor how much each time but we reduced it from time to time.

59. Do you remember to what figure the first reduction was?

A. I do not.

60. Was it to about $2.50 per thousand?

A. I don't remember that but I know we reduced it from time to time without being compelled to do so until when I was there last we were selling gas for illuminating purposes at $1.00 per 1000 and fuel gas at 75 cents.

1435 61. There was not any power to compel you to reduce the price was there?

Ans. I think there was but they did not see fit to exercise it.

62. The old company existed under a charter from the State, did it not?

Ans. Yes sir.

63. As I understand you, you do not recollect what those reductions were or when they were made?

A. I do not. I remember one time we were charging $2.25 and Mr. Comstock was going to build a plant and failed and the city came to us and asked us what was the best we could do and I remember of telling the city committee that if Mr. Comstock was out of the business we would reduce the price 25 cents and make it $2.00 per 1000.

63. When was that?

A. That was when John B. Smith was in the council—say in 1876 or '77.

65. There had been no gas sold below $2.00 up until about 1876 or '77?

A. We had reduced it from $3.50 down to $2.00.

66. You were formerly a lawyer in active practice, were you not?

Ans. Yes sir.

67. How long did you continue practicing law?

A. I practiced law here about 22 years, up to about 1882—from 1860 to 1882, I think.

68. For some seven or eight years after you became connected with this gas company?

Ans. Yes sir.

69. During that time, was it not your opinion as a lawyer and did you not maintain that the city had no power to control the rates to be charged by that company in view of the fact it had a charter from the State?

Objected to as incompetent and immaterial.

1436 The MASTER; I do not think it competent or material either.

Mr. ABBOTT: I desire the question answered.

The MASTER: He may answer subject to the objection.

A. I don't remember of ever being called upon to pass on that question although I might have told somebody that they could not make us do it.

70. Was not that your opinion?

A. I don't know. It has been my opinion for a good many years

that they had the authority to make us sell gas at a less price if we could produce it for a less price and we voluntarily reduced it.

71. Did you know anything of the management of the company at the time you became a stockholder and for a few years prior thereto?

A. I only knew from the results and the statements made at the meeting at which I was first elected a director.

72. What opinion and judgment did you form from the results and statements at that meeting?

(Objected to as incompetent.)

The MASTER: I don't think it material but he may answer subject to the objection.

A. I judged by the results that the management was not very good.

73. What had they been doing, if anything, in the way of saving their tar as a by-product?

A. I did not know but I heard things.

74. What evidences were there about the plant at the time you became a stockholder as to what efforts they were making in that regard?

A. At that time tar was not worth a great deal; tar was used afterwards for paving streets and roofing houses; it came into use after our time, before that it was not used extensively in pav-
1437 ing streets and as tar paper.

75. How soon did it come into extensive use?

A. Right off after I became a director and some before but not generally as it was afterwards.

76. Is not that substantially the only use made of it now, for paving streets and roofing purposes?

A. They had not commenced to put on gravel roofs and pave streets before that.

76. They did commence shortly after that?

Ans. Yes.

77. At that time you commenced to save tar and sell it as a by-product?

Ans. Yes sir.

78. You got a good price for it, didn't you?

Objected to as indefinite.

The MASTER: Yes, I think so; let him state what price he got, if he can.

A. Well, for the time we got a pretty fair price, we thought, but the tariff was taken off from Europe and that reduced the price of tar very materially.

79. What did you get when you first began to sell it in considerable quantities?

A. I cannot remember that now but I should say about $1.00 a barrel.

80. Do you know how that compared with the present price?
A. I don't know what it sells for now.
81. What efforts were made at the time you became a stockholder to save the ammonia and sell it as a by-product?
A. There was no effort at all being made to save it at the time I became a director but sometime after I became a director we built an ammonia plant—a few years afterwards.
82. What price did you get for the ammonia then?
A. I am like Mr. Henebery about that, I don't remember;
1438 we got from $900 to $1100. per car; I don't remember the pounds.
83. It was shipped in a crude form was it not?
A. It was shipped in the solids of ammonia.
84. Do you know how that price compares with its present price?
Ans. I do not.
85. How soon after you became a stock holder did you commence to sell your coke in considerable quantity?
A. Immediately.
86. The receipts from the sales of your by-product of coke, tar and ammonia went into the general funds of the company, did they?
Ans. Yes sir.
87. And these dividends that were paid and these improvements made were supplied from the fund to which these sums had contributed?
Ans. Yes sir.
88. When was the water gas plant put in?
A. That taxes my memory; it seems to me it was about 1884.
89. What was the purpose of that plant?
A. That we might, as I have stated, make the gas better and cheaper.
90. Don't you mean by that to make the gas of a higher candle power than poor coal gas would have done?
A. Yes sir, before that we used block coal and we could not make it rich enough with coal alone.
91. Is it not a fact you could not make over 18 candle power gas with coal alone?

(Objected to as incompetent and not cross examination.)

A. I am not very familiar with that.
92. Is it not a fact that it takes about from 22 to 24 candle power of water gas to equal an illuminating power 18 candle power coal gas?
A. I don't know that it would take that much but it takes
1439 a higher power to make the illuminating light out of water gas.
93. There is a difference, is there not?
A. Yes sir; the mechanical part of it I am not so familiar with as a man that works at the retorts.

94. Did the Peoria Gas Light & Coke Co. continue to make a charge for meters?

A. Not very many months.

95. Is it not a fact that they continued to make a charge for meters during the entire period of your connection with the company where the amount of gas used per month amounted to less than 25 cents?

Objected to as immaterial, incompetent and not cross examination.

A. That is a fact where they got meters and did not use gas we charged them meter rent, I believe during the entire time.

96. Is it not also a fact that during the entire time you were connected with the company they charged the consumer for the cost of service pipes and connections from the street main into the premises of the consumer?

(Objected to same grounds.)

The MASTER: I don't think it cross examination but he may answer subject to the objection.

A. As I remember it we charged for the pipe from the main to the meter but we never charged for the meter; we did charge at times, I believe, for the setting of the meter but nothing for the meter unless we sold the meter to somebody.

97. Is it not a fact there was a rate charged of $3.50 and a minimum rate for setting the meter during all the time you were connected with the company?

A. No. A meter has some pipes and valves to it in the meter itself and connections to it, and we charged for those, as I remember, part of the time if not all, we charged for the pipe from the main to the meter and for the setting of the meter but not for the meter.

1440 98. The meter was retained as the property of the company?

A. Yes sir.

99. Do you remember what was charged for the setting of each meter?

A. I don't know, but it was somewhere like $3.00 or $3.50 probably.

100. Was it not from $3.50 up?

Ans. Possibly, it might be.

101. And these charges were made notwithstanding the fact that you were paying dividends every year of 10% and one year you paid a dividend of 37½% on your stock?

Objected to as incompetent and immaterial.

A. I think we always charged for the pipes from the main to the meter and for the setting of the meter or nearly always, I am not sure but what the charge for setting the meter was taken off in the last year.

102. Was not there always a minimum meter rate charged whether there was any gas used or not during the time of your connection with the company?

A. As I remember it and understood it, we always charged for the meter where they did not consume gas.

103. And those were during the years the company was paying the dividends with reference to which you have testified?

A. Yes, but there were not very many meters of that kind.

104. Do you remember how long the rate of $3.50 per thousand feet continued after you became interested in the company?

Objected to as already answered.

A. My recollection is, just as I told you before, it was a very short time.

105. To what price was it then reduced?

Objected to as already answered.

A. I don't remember.

1441 106. When did the Peoria Gas Light & Coke Co. first begin furnishing gas for fuel purposes?

A. That is a hard question—say 15 years ago.

107. Do you know what price was being charged for illuminating gas at that time?

Ans. I do not.

108. And what price was charged for fuel gas?

A. I think we first put it in at $1.00 a thousand.

109. And it continued at that price until very recently did it not?

Ans. No, it was a number of years ago, say 7 or 8 years ago, that we reduced it to 75 cents.

110. At what price was illuminating gas being sold for then?

A. My recollection is it was $1.25.

111. When did that price begin?

A. The price was not universal; we made a schedule of consumers over a given number of feet who got it at one price and then another schedule at another price and the smaller consumers paid a higher price. My recollection is at that time when we reduced it to $1.25 with 10 cents off it was furnished at that price to any consumer at that time.

112. What was it just before that reduction?

A. I don't remember. I think we reduced illuminating gas to $1.00 and fuel gas to 75 cents the last I know anything about the prices.

113. Is it not a fact it continued to be $1.35 for illuminating gas until after the Peoria Gas & Electric Co. was organized?

A. I don't think that is a fact; I think we reduced it to $1.00 for illuminating gas before a charter was granted to the new company.

114. Is it not a fact that that was done after an application had been made by the new company to the city council for a license?

A. I don't know. How long was it after you made the
1442 application before you commenced to build?

115. We began to build in the summer and the application was made in March.

A. It was about that time, whether it was just before or just after, I am not positive.

116. Was it not after the application was made to the city by the complainant company for a license to do business in the city?

A. I don't remember.

117. Is it not a fact that it was that application and that pending ordinance that made the Peoria Gas Light & Coke Co. reduce its price to $1.00?

Ans. Possibly it was, I don't remember.

118. Didn't you at the time raise the price of fuel gas to $1.00?

Ans. We attempted to bring the two together—you see the fuel gas had a meter and the lighting gas a meter and we issued an order to bring them together, but there was such a complaint made we never did it.

119. Didn't you bring them together at $1.00?

A. No sir, I am pretty near positive we did not; we issued an order and was going to collect it that way—we reduced the lighting gas from $1.25 to $1.00 and raised the fuel gas from 75 cents to $1.00 and attempted to make it that way, for this reason, that we had two meters and meters cost a great deal of money, they rust out and it required two takings, two bills and two collections, and it was too expensive; our secretary reported to us we were throwing away between $4,000. and $5,000. a year by having two meters, and we attempted to bring them together, but the attempt raised such a terrible storm that we never did collect a bill in that way. We just abandoned it and went on as we had done.

120. How long does a meter last, as a rule, in working condition?

Objected to as not cross examination and because proper
1443 foundation has not been laid.

A. I cannot tell the number of years but we were constantly buying meters at a great expense.

121. Did not they require constant repairs and renewals?

A. Constant repair and constant renewal.

122. Do you remember what the price charged by the company was before it was reduced to $1.35?

Ans. I do not.

123. Do you know what period of years was covered by that price whatever it was?

A. Not very long; I think it was $1.50; we got it down to $2.00 at the time I told you about and then my recollection is we made it $1.75, then $1.50 and then $1.35, we kept cutting it down.

124. When you were making more money than you knew what to do with, you would reduce it a little?

A. Well, we managed to handle all the money we made.

125. You were at one time a member of the city council, were you not?

Ans. I guess so.

126. You were mayor, too, were you not?

Ans. Yes.

127. During what years were you mayor?

Ans. 1876 and 1877.

128. Did you during the years you were in the city council or during the time you were mayor investigate the question at all of the right of the city to interfere with the prices your company were charging for gas?

Objected to as incompetent, immaterial and not cross examination.

The MASTER: I don't think it competent or material either.

A. I don't remember that I investigated that question.

129. Did you consider it from the standpoint of your official connection with the city as distinct from your connection with the gas company?

(Objected to same grounds.)

A. I don't think the question was brought up for my con-
1444 sideration. You must remember I was mayor two years after I became connected with the gas company—two or three years after—and we were constantly reducing the price of gas until the people were satisfied.

130. Were the people satisfied in 1898 and 1899?

A. I think they were if they had not disturbing elements.

131. Were not there constant complaints at the office of the Peoria Gas Light & Coke Co. with reference to the charge being made by that company for service pipe from the main into their premises?

Objected to as immaterial and incompetent.

A. The secretary got those complaints; I did not get them.

132. They reached you ultimately, did they not?

Objected to same grounds.

A. I don't remember; I don't think they ever were brought up in the directory.

133. You knew such complaints were being made, did you not?

A. I guess there were complaints. The fact is I think there would be complaints if we only charged 10 cents a thousand.

134. There were also complaints with regard to the charge for the setting of meters?

Ans. Yes, I guess there was.

135. Were not there complaints also of the general arbitrary and unreasonable character of their treatment in the company's office.

Objected to same grounds.

A. I was not in the office much and I didn't hear anything of that kind. I heard a few complaints of that kind but I think people would complain about the price of gas and their treatment if they got it at any price.

137. There were complaints at that time that the price was too high?

Ans. I think so and there always will be.

138. They had a right to complain if you were paying 37½ per cent. dividends, I should think?

Objected to as incompetent and immaterial.

1445 The MASTER: I think so, gentlemen. I don't want you to continue this line of examination any longer.

The WITNESS: We were reducing the price pretty fast.

Re-direct interrogatories by Mr. TICHENOR:

1. Is it not true that you heard a great many more complaints now of the treatment of consumers of gas than you ever did under the old management?

Objected to as incompetent, immaterial and not proper re-direct.

The MASTER: I don't think it competent. I didn't think the questions on cross examination in that respect were competent but, if counsel desires to press it, he may answer subject to the objection.

A. I don't know anything about complaints.

2. And you did not then?

Ans. No, not much.

3. What is the material of which those meter connections, to which you have referred, are made?

A. I think part of it is lead, what they call a stop cock and valve.

4. How long will those connections last?

A. They will last pretty nearly forever lead and brass; it is the meter I refer to as needing repairs, etc., a connection will last practically forever.

5. So when that is once put in the expense on that account is at an end?

A. Yes sir, at least I never heard of them being renewed.

6. Is it not also true that during the time you were connected with the company there were almost no service pipe renewed except perhaps some old and poor ones that were in when you first took possession?

(Objected to as incompetent and immaterial.)

A. I will answer that by saying to you that after we commenced to use the water gas the service pipes were too small and

1446 whether they were rusted out or not they would block up with nap-tha and it became necessary to make those pipes

larger and, of course, the pipes were more or less rusty and we put in new pipes and sometimes the company put them in without charge and sometimes they charged for them.

7. When you state that in your judgment the value of the property at the time you acquired an interest was the amount of the capitalization, viz: $175,500., what do you take into account?

(Objected to as immaterial, incompetent, not proper redirect.)

A. I take into account the prospect of the gas works, the business; the intrinsic value of that property was not near that—the lots and the buildings, the benches and the pipes in the streets was not worth near that much in my judgment because we had to overhaul it and build it all new.

8. From your judgment and experience in the gas business, in Peoria, as you have detailed in your testimony, taking into account the manufacturing plant and distributing system of the Peoria Gas Light & Coke Co. as it stood at the time you severed your connection with it as a director about the year 1898, you may state whether or not gas could now be furnished for general consumption in the city of Peoria at 75 cents per thousand cubic feet and enable the company to make a good profit?

Objected to as incompetent, immaterial and also because no proper foundation has been made, the witness having expressly stated that he is not familiar with the mechanical parts of the property.

The MASTER: I think the question incompetent in its present shape. The conditions ought to be stated in order to give the witness an opportunity to determine.

9. Supposing the conditions which would affect the situation to be as they were at the time you severed your connection with
1447 the company?

(Objected to same grounds as before.)

A. I think in 1898 the Peoria Gas Light & Coke Co. could have made both fuel and illuminating gas at 75 cents per thousand and made a fair dividend; I don't know what they could make today because I don't know the price of coal, lime or what they get for tar or for coke, so I could not answer as to today, but I can as to 1898, I think, safely.

10. State whether or not, as all conditions affecting the cost of gas production existed in 1898, 75 cents per thousand cubic feet would in your opinion have been a fair and reasonable price for gas furnished to consumers?

Objected to as incompetent, immaterial, no proper foundation laid and no qualification of this witness shown to answer such a question, and also because the question as stated does not contain all the necessary elements entering into such a question.

The MASTER: You can go into that question on cross exam tion. I think the witness may answer subject to the objection.

A. I think gas could have been produced at a profit in 1898 a fair dividend paid at 75 cents, but I say to you I do not know thing about it now.

11. Do you know what portion of the gas furnished by the Pe Gas Light & Coke Co. in 1898 was for illuminating purposes what portion was for fuel purposes?

A. I don't know exactly, I remember of noticing in a repor the gas made at one of the monthly meetings of the directors the fuel gas was very nearly as much as the lighting gas and it was increasing in output much more rapidly than the light gas. I think it was pretty nearly even in 1898. The books are things you ought to get for that.

1448 Re-cross examination by Mr. ABBOTT:

1. You say 75 cents under the conditions existing in 1898 wa fair price for illuminating gas and would have allowed a reasona profit—why didn't your company charge that price for it then?

(Objected to as immaterial and incompetent.)
The MASTER: I don't think it competent.

A. We were constantly reducing the price of gas from time time as we were making money for 24 years and we would have duced it again undoubtedly if we had been let alone, we had alwa done so before.

2. (Interrogatory No. 1 repeated to witness.)

Objected to same grounds.

A. For the reason we had just shortly before that time made reduction from $1.25 to $1.00.

3. It was not reduced to $1.00 until after an application was ma for a franchise by the new company?

A. I don't know, but I know it was reduced to $1.00 while I w there.

4. If 75 cents under the conditions existing in 1898 was a fa price for illuminating gas and allowed a reasonable profit why w your company charging more for it at that time?

Objected to same grounds.
The MASTER: I don't think it competent.

A. I can only say we had not got to that reduction yet.

5. What was the cost of gas coal per ton in 1898?

Objected to as immaterial and not cross examination.
The MASTER: I think it is.

A. My recollection is we paid for second pool Youghiogheny gas coal from $2.25 to $2.37 per ton delivered in Peoria.

6. Was it on that cost for Youghiogheny coal you base your estimate of what might have been its selling price in 1898?

1449 A. That was part of the cost of the gas.

7. How many thousand feet of gas can be produced from a ton of coal?

Ans. I don't remember.

8. Then you cannot state what in cents would be the cost of a thousand feet of gas so far as the coal that went into it was concerned could you?

A. I was not familiar with how much the lime cost, the coal cost or the labor cost for the production of gas, I only estimate the reason it could be produced for 75 cents from what we had done and the money we made; that is all I know.

9. Do you know the cost of oxide of iron for purifying?

A. No, I do not know it.

10. Do you know the cost of stokers per month?

A. No, I don't know that exactly; of course, I heard those things and the salaries we were paying every month, but I don't remember.

11. Do you know the cost of any single item either of labor or material that entered into the cost of producing gas in the year 1898?

A. I don't know accurately the cost of those things except perhaps the coal somewhat and the iron pipe we bought.

12. How much of that do you allow for the cost of manufacturing gas and how much for the cost of its distribution?

A. I never made an estimate of just what it cost to produce gas, that is, estimate the coal, the lime, labor and materials; I base my opinion on what we did do and only on that.

13. Do you know what proportion of the cost of gas delivered to consumers is covered by the cost of distribution?

Ans. I do not.

14. Do you know what changes have been made in the last 3 or 4 years in the necessary expenses in the distribution department of a gas works?

Ans. I do not.

1450 15. On what annual output did you base your estimate of the cost of gas that would enable it to be furnished at 75 cents per thousand feet?

A. I did not base it on our output but on the basis of our business transactions.

16. Do you know what the output was in 1898?

A. I did know but I don't remember.

17. Do you know how much gas they made that year?

A. I don't now remember; of course, I knew every month what we put out at the time.

18. In making that estimate of the cost of gas, how much did you take into consideration for repairs and renewals of the plant?

A. I did not take into consideration anything about what was for repairs or what anything cost; I did not take into account what any of these things cost; I took into account what we had done.

19. Did you allow in that anything for depreciation of the plant or mains?

A. I think it would be fair to allow for it and I would allow it in an estimate.

20. How much did you allow for that in your estimate?

A. I did not allow any particular sum; in my figures that we could produce gas for 75 cents a thousand at that time my estimate was based on what we had done, and making a due allowance for all depreciation in pipe and mains.

21. What amount did you allow for depreciation?

A. I did not allow any more than what we had usually had.

22. What was that?

A. I never allowed any specific sum for depreciation.

23. What amount was customary to set aside for depreciation?

A. We never set aside any money for depreciation.

24. What per cent. of profit considered as a per cent. on
1451 the value of the plant, did you include in that cost, if any?

A. Well, I would say when I say we could produce gas at 75 cents per thousand at that time it would give us a 6 per cent. profit on the value of the plant.

25. On what value of the plant?

A. On a million dollars.

26. That would give then——

Ans. $60,000. a year.

27. On what output?

A. Understand, that these are rough estimates; I have never made estimates on those things as an expert and I only know from the general results in the transactions we had.

28. (Interrogatory 27 repeated.)

A. When I said gas could be produced at 75 cents I meant I could build a plant here at that time and produce gas for 75 cents a thousand.

29. (Interrogatory 27 repeated to witness.)

A. I was figuring on the annual output we put out.

30. How much was that?

A. I don't remember now; I knew, of course, at the time every month.

31. As I understand you this estimate does not take into consideration any of the different elements or items of cost which enter into either the manufacturing or distribution of gas or any definite output per annum in million feet.

A. I only make an estimate from what we did do and the prices we paid for material and labor.

32. Did you ever make any recommendation to your board of directors that they should reduce the price to 75 cents?

Objected to as incompetent and immaterial.

The MASTER: I don't think it competent.

A. No sir. (I think a recommendation was made by Peter
1452 Coffey who knew better than I did.)

Complainant objects to that part of the foregoing answer enclosed in brackets as not responsive and moves the court to exclude it.

The WITNESS: We will take it out then, it was done by him anyway. I never made the recommendation myself, that is my answer.

MATHEW HENEBERY recalled on behalf of defendant, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. State whether or not, as all conditions affecting the cost of gas production existed at the time you severed your connection with the company, as you have detailed, gas could have been furnished to consumers in Peoria profitably to the company at 75 cents per thousand cubic feet. I desire to have you base your answer upon your experience and knowledge gained in the gas business during the time you were associated with the Peoria Gas Light & Coke Co. as you have already testified.

Objected to as incompetent, immaterial, no proper foundation laid, no qualification shown of the witness.

A. I would say yes, at the time I sold out.

Cross interrogatories by Mr. ABBOTT:

1. On what basis as to the cost of coal is that?
A. On whatever the cost was about the time I sold out.
2. Do you know what that was?
Ans. No.
3. On what basis as to the cost of purifying material is that?
A. I don't know.
4. On what basis as to the cost of labor?
1453 A. I don't know.
5. On what basis of the cost of stokers?
Ans. I don't know.
6. On what basis as to the cost for officeers' salaries?
A. I don't know.
7. On what basis for the cost of the clerks and other employés in the distribution department?
Ans. I don't know.
9. On the basis of what output per year?
A. I have an idea of the output but I am not basing my calculation on the output.
10. Is your estimate based on the assumption that your company would continue its practice of charging the consumer for service pipe from the main into their premises and for the setting of meters?

A. That may be but my estimate is based on the income we received from the business.

11. It is a fact, is it not, that for a number of years prior to the time you sold your stock your company was charging the consumer for the service pipe from the mains into the premises both repairs and renewals and new pipe?

Ans. I have nothing to do with that.

12. Is it not a fact that was being done?

A. That might have been done.

13. Was it or was it not?

A. I don't know, In base my estimate altogether on the income received by the company.

14. Were not they also charging for the setting of meters during those years?

Ans. I think on some occasions they did.

15. Did they not on all occasions?

A. Well, I don't know.

16. Do you know of any single instance where they were
1454 set free for the consumer?

A. I think there were instances.

17. Name them if you can.

Ans. I cannot.

18. Your estimate for that price for gas is based then on the conduct of the gas business as it was at the time being conducted by your company. That is true, is it?

Ans. Yes sir.

19. When did you come to that conclusion?

A. I came long ago to it.

20. Before you sold your stock?

Ans. Yes.

21. Did you ever bring it to the attention of your directors?

A. I did. I think I ought to have been in the crazy-house for selling at all at the price we did.

22. Why did you sell at that price?

A. Circumstances—circumstances alter cases.

23. What were the circumstances?

A. Well, my partners came to that conclusion and I did not want to hold the bag alone.

24. Who were your partners?

A. Farrelly, Coffey and myself had a majority of the stock and it was the understanding—Interrupted.

25. What do you mean by saying you did not want to hold the bag alone?

A. I wanted to go with the other men that were in with me but at the time I sold I did not think I was getting a sufficient price.

26. Why did you sell if you thought you were not getting a sufficient price?

A. Things were getting pretty hot.

27. Competition was coming in pretty active was it not?

A. Pretty lively, yes sir; it came on all sides, not only by the parties who bought but by the citizens who thought they had
1455 a big thing.

Re-direct interrogatories by Mr. TICHENOR:

1. As I understand your answer with reference to the price at which gas could be produced at the time in question you base your estimate upon what your company had actually accomplished in the way of earnings?

Objected to as incompefent, immaterial, not proper re-direct.

A. Yes, I based it on the amount of money received by the company.

2. State if it is not true that all of those services and meter connections were put in at actual cost to the company when any charge at all was made and not at a profit?

A. That was the supposition but I don't know personally.

Complainant objects to the answer as incompetent and not responsive and moves the court to exclude it.

LESLIE ROBISON recalled for further cross examination.

Questions by Mr. ABBOTT:

1. Was the estimate you made as to the selling price of gas in 1898 based on the assumption that the company furnishing it would continue to follow out the then practice of your company in charging the consumer for service pipes from the main into their premises and also charge them for the meter settings and meter rents?

A. I suppose so, but that did not enter into the profits of the company; we aimed to get—Interrupted.

2. The question is answered.

A. It requires an explanation.

3. Would it not have made a difference in the profits of the
1456 company if those things had been furnished to the consumer at the company's cost?

Ans. Yes sir, it would have made a difference.

(Mr. TICHENOR:)

Q. Is it not a fact that the number of new services put in and the number of new meter connections made combined made a comparatively trifling item during a whole year?

Objected to as incompetent and immaterial and calling for a conclusion.

The MASTER: Let him state his knowledge on that point.

A. It took considerable money per annum to put in service pipe

FERD LUTHY recalled on behalf of defendant deposes and says.

Direct interrogatories by Mr. TICHENOR:

1. You are the same gentleman that testified once before in this case, are you?

Ans. Yes sir.

2. State whether or not you were served with a subpœna to produce certain papers pertaining to the case in question?

A. Yes sir.

3. Have you them with you?

A. No sir, I have looked for them but could not find them. You asked me to produce the stock certificate. I told you I think in my previous testimony I did not have it. I also looked for Mr. Walsh's receipt for money but I could not find it; I looked through my files at the office this morning for 15 or 20 minutes but could not find the documents.

4. Have you not receipts or certificates which were issued to you at the time you surrendered your stock certificates in the complainant company?

A. I think I got a receipt of some kind but I have not been able to find it this morning.

1457 5. You are satisfied, are you, that such a paper is in your possession somewhere among your papers?

A. I think beyond doubt I received such a receipt but I have not been able this morning to find it; I have misplaced it some place.

6. To whom did you surrender your stock certificates?

Objected to as incompetent, immaterial, irrelevant and a private matter of the witness.

A. As I remember it now, my stock certificate was delivered either to Sumner R. Clarke or Mr. Little.

7. Was that the same time you received this receipt in exchange for it?

A. I think I received a receipt at that time.

8. How many stock certificates did you have?

A. I had one and a memorandum for another, I think.

9. That had not been actually issued to you?

A. I don't remember whether it was issued to me or would be issued to me. I am not certain which of the two; in effect it would be the same. I have looked quite faithfully among my papers this morning for the receipt but the purport of it I think would be as I have already testified in my previous testimony.

10. I prefer to have the paper itself if you will make a further search for it.

A. Well, if I can find it I will.

(Witness excused for the present.)

Direct examination of SUMNER R. CLARKE resumed by Mr. Tichenor:

52. What were the circumstances under which those certificates went out of your possession?

Objected to as assuming that they did go out of his possession.

1458 A. I answered, I did not remember whether they were issued or not; I would have to refer to the record.

53. Does your company, or any of its officers, keep a stock certificate book?

A. I don't know of my personal knowledge but I suppose so.

54. Do you know whether you as president of the company have signed such certificates as have been issued either of the original stock or of the increase?

A. Not without reference to the certificates.

55. Are you able to state from recollection at this time whether or not you have ever signed any stock certificates either for the original capitalization or for the increase of complainant company?

(Objected to as immaterial.)

A. I would have to refer to the certificates; the records would show that, I think.

56. State whether or not you have at any time, either in your official capacity as president of the company or otherwise, signed any agreement, contract or other document pertaining to the holding of any or all of the present capitalization of your company?

Objected to as incompetent and immaterial.

A. I could not state without the minutes of the meetings or the books.

57. You have records which will disclose those facts?

A. They should show them.

58. State whether or not you alone, or in connection with any other person, have ever issued any receipts, or any papers in the nature of receipts, for stock certificates held by any of the stockholders of complainant company?

Objected to as incompetent, immaterial and irrelevant to the issues in this case.

A. I think so.

1459 59. Have those receipts been issued by you alone, or did some one else sign them with you?

(Objected to same ground.)

A. With another party.

60. Who was the other party?

(Objected to same grounds.)

A. John R. Walsh.

61. In what capacity did you and Mr. Walsh issue the receipts for stock certificates to which you have referred?

Objected to as incompetent, immaterial and irrelevant.

A. I have forgotten how they were signed.

62. In what capacity were you acting in executing those receipts?

(Objected to same grounds.)

A. Trustees, I think.

63. State whether or not you have given such receipts for the entire capitalization of complainant company as it is at the present time?

(Objected to same grounds.)

A. Without being positive I should say, no I think not.

64. For what portion of it have you given such receipts?

Objected to same grounds.

The MASTER: The trouble is, the witness don't know whether it has all been issued or not and of course he could not answer that question without he had a knowledge of how much of the stock has been issued.

Mr. TICHENOR: I only want the knowledge of the witness so far as it extends.

A. Any of these questions you are asking I could probably give positive answers to by going to the records.

65. Will you examine the records and be able to state positively when called upon further to do so?

Ans. Yes sir.

66. From what source, if any, did you and Mr. Walsh derive authority for issuing the receipts to which you have referred?

1460 Objected to as incompetent, immaterial, irrelevant and assuming there was authority.

A. From the certificate holders.

67. In what form, written or verbal?

Objected to as incompetent, immaterial and irrelevant.

A. In writing.

68. Do you know where that authority is at the present time?

Objected to same grounds.

A. Only so far as my own certificates are concerned.

69. What is your answer then so far as your own certificates are concerned?

Ans. I do.

70. Where is it?

Ans. On file with my papers.

71. Will you produce that document at the coming in of court at ten o'clock tomorrow morning?

Ans. No.

72. You say you will not?

A. I think it is a private matter unless the court rules I must produce it.

73. State whether or not the authority for issuing those receipts, to which you have referred, is a document signed by all the stockholders, or is there a separate document signed by each one of the stockholders?

Objected to as incompetent, immaterial and irrelevant.

A. My remembrance is they were separate.

74. That is as to each stockholder?

Ans. Yes.

75. Are each and all those documents so executed by the several stockholders now in your possession?

Objected to as incompetent, immaterial, irrelevant and a private matter between the stockholders.

A. I don't remember the form of the document; we gave them a receipt; what we held I don't remember.

76. Are you still certain that the authorization in question was by separate documents executed by the different stockholders?

1461 A. To the best of my memory.

77. State whether or not at the time you issued those several receipts you received from the several stockholders their stock certificates.

(Objected to as incompetent, immaterial and irrelevant.)

A. That is my remembrance although that contradicts an answer I gave this morning about my certificate being in my possession.

The MASTER: You have a right to correct your evidence if you recollect now your former answer was not correct.

The WITNESS: This virtually corrects it; I am speaking from memory.

78. Are those several stock certificates still in your possession? I am speaking now of the ones you took up at the time you issued the receipts to which you have referred?

Objected to as incompetent, immaterial and irrelevant.

A. Whatever we gave our receipts for are in our possession, whether you have properly designated it or not in your question I don't know.

79. I intend in my question to cover all the stock certificates you gave up to the time of the issuing of those receipts.

A. Yes sir, they are in our possession.

80. That is, in the possession of yourself and Mr. Walsh?

A. Yes.

81. As trustees, are they?

A. Yes, I think they are signed that way.

82. Where are those actually kept, in Peoria or in Chicago?

Objected to as incompetent, immaterial and irrelevant.

A. I don't know whether they are here or in Chicago without referring to the records—I don't know as to the records but referring to my own account.

1462 83. State whether or not there is in existence at the present time an agreement entered into by the stockholders of the complainant company covering the subject matter of placing all of that stock in the hands of yourself and Mr. Walsh as trustees?

Objected to same grounds.

A. No sir.

84. Has there ever been any agreement of that kind to your knowledge?

(Objected to same grounds.)

85. State whether or not there is now, or ever has been, in existence an agreement which covers the subject matter of the placing of all of those stock certificates, or any portion of them, in the hands of yourself and Mr. Walsh as trustees for any purpose?

Objected to as already asked and answered and as incompetent, immaterial and irrelevant.

The MASTER: He may answer if he has not already answered it.

A. Yes sir.

86. When was that agreement executed and who executed it?

Objected to as incompetent, immaterial and irrelevant.

A. I don't know when it was executed but that is the same receipt I referred to given by us as trustees.

87. Do I understand you to say that there was no agreement preceding the issuing of those receipts which cover the subject matter of placing the stock certificates of complainant company in the hands of yourself and Mr. Walsh as trustees?

Objected to same grounds.

A. Do you mean a company agreement or personal agreement?

(The MASTER:)

88. He means this. Whether or not the subscribers of this stock entered into an agreement to put these stock certificates into the hands of yourself and Mr. Walsh as trustees to hold them?

1463 Mr. TICHENOR: That is what I mean.

A. Not as a whole, individually they did. I do not mean to say that all the holders of the certificates put them in our hands.

89. Have you in your possession a receipt issued by the trustees named for the stock certificates, if any, issued to you for any portion of the capital stock of complainant company?

Objected to same grounds as before.

A. I think we have in our possession the stub of the receipt that was given for these certificates.

90. I think you fail to understand my question. (Int. 89 repeated to witness.)

A. They have the receipts you know, and we have the certificates.

91. Have the trustees as such issued to you as an individual any receipts of the character mentioned for your stock?

Objected to as incompetent, immaterial and irrelevant.

A. I hold their receipt.

92. Will you produce that receipt upon the coming in of court at ten o'clock tomorrow morning?

Objected to as incompetent, immaterial and a private matter of the witness counsel has no right to inquire into in this proceeding.

Mr. TICHENOR: No objection is proper to a question of that character.

The MASTER: I think not. The question is simply whether or not the witness will produce this receipt at the coming in of court tomorrow morning and he can answer the question one way or the other.

A. It is a private matter and it don't seem to me I am obliged to produce it.

93. Then you refuse to produce it, do you?

The MASTER: I think before you ask the witness to answer
1464 that question it is incumbent upon you to show that this receipt held by Mr. Clarke is similar in character and terms as the receipts issued generally for this stock.

Mr. TICHENOR: You may answer the question as stated by the master.

Objected to as incompetent, immaterial and irrelevant.

A. It is my remembrance it is.

94. Will you produce that receipt at the convening of court tomorrow morning at ten o'clock or at such other proper time as counsel for defendant may ask for it?

Objected to as incompetent, immaterial, irrelevant, being a private matter of the witness which counsel has no right to call for in this examination.

A. My answer will be "no."

95. You may state to whom of the stockholders of the complain-

ant company you and Mr. Walsh have issued receipts like the one which you say you hold for stock certificates.

Objected to as incompetent and immaterial.

A. I cannot do it without referring to the records to give it to you correctly.

96. Can you state from recollection any Peoria stockholder to whom you have not issued such a receipt?

Objected to as incompetent, immaterial and irrelevant.

A. No sir.

97. Are those receipts, to which you have referred, all alike except as to number of shares and the person to whom they are issued?

Ans. That is my remembrance.

98. Do you remember whether they were typewritten or whether they were a printed form?

Objected to same grounds last mentioned.

A. I do not.

1465 Adjourned by agreement until Wednesday, May 7, 1902, at 10 o'clock a. m.

United States court room, Government building.

PEORIA, ILLINOIS, WEDNESDAY, *May* 7, 1902—10 a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin and Mr. E. C. Ritcher appearing for complainant. Mr. Henry Mansfield and Mr. F. H. Tichenor appearing for defendant.

Direct examination of SUMNER R. CLARKE resumed by Mr. Tichenor:

99. You were asked yesterday as to whether or not all the increased capitalization of the complainant company had been issued and you replied in substance that you could not make a positive answer without reference to the records, have you now informed yourself upon that question?

Objected to as incompetent, immaterial and irrelevant.

A. Yes sir, it was issued to the people entitled to it.

100. What book of record contains the material pertaining to the issue of this increased capitalization?

Objected to same grounds.

A. The stock book.

101. In whose custody or control is that stock book at the present time and to whom does its custody under your management belong?

(Objected to same grounds.)

A. I think it is in charge of the Equitable Trust Co. of Chicago.

102. Have you examined that book since you were on the witness stand yesterday?

Ans. No I could not.

103. For what purpose, if you know, is it in the possession of the Equitable Trust Co. of Chicago?

(Objected to same grounds.)

A. It is for the purpose of transferring sales of stock or any changes.

1466 104. In what capacity, if you know, does the Equitable Trust Co. act with reference to such transfers?

Objected to same grounds.

A. The Equitable Trust Co. is registrar of receipts and a transfer agency.

105. By what authority is it made so?

Objected to same grounds.

A. I think the authority of the directors.

106. Are you able to state from recollection when that authority was given?

(Objected to same grounds.)

A. No sir.

107. Is there any record of the company, or of its directory, which will show when it was given and its purport?

Objected to same grounds.

A. I don't know of my positive knowledge but I presume the books would show it.

108. Is there anything controlling that subject matter except as embodied in the records of your company?

Objected to same grounds.

A. The by-laws might but I think it would be in the records.

109. Is there any agreement, contract or anything of that character which constitutes the foundation for such authority on the part of the Equitable Trust Co.?

(Objected to same grounds.)

A. Not that I know of without reference to the records.

110. Has your connection with the company and have your official duties been of such a character as to advise you if any such agreement is now, or ever has been, in existence.

Objected to same grounds as before and also because the relations of the witness to the company in that regard were fully and exhaustively gone into in his previous testimony.

The MASTER: That is my impression, but he may answer
1467 the question.

A. I am away a good deal of the time.

111. So there might be an agreement of that kind and you not know anything about it?

Ans. Yes sir.

112. What book or record kept by the compan*t*, or by any of its officers, or by the directory, contains the material to which you have referred as forming the foundation for this authority to which you have testified on the part of the Equitable Trust Co.?

Objected to as immaterial, irrelevant and incompetent and assuming the witness has knowledge of such matter.

The MASTER: He may state if there is any such record.

A. I have no remembrance.

113. Do you know in what form any such authority has been deposited with the Equitable Trust Co.?

Objected to as immaterial, irrelevant and incompetent and already asked and answered.

The MASTER: He may answer if he can.

A. I could not answer; I don't know.

114. Can you state when that authority was granted?

Objected to same grounds.

A. No sir.

115. Are these stock certificates, to which you have referred as representing the capitalization of complainant company, or any part of them, in the custody or control of the Equitable Trust Co. under any duties devolving upon it by virtue of the authority to which you have referred?

Objected to as incompetent, irrelevant and immaterial.

A. I think they are in the charge of the Equitable Trust Co. But I don't remember by what authority.

116. Are they all there do you mean?

Objected to same grounds.

1468 A. I don't remember.

117. Who placed them there if you know?

Objected to same grounds.

A. I don't remember.

118. State whether or not all those certificates of stock so far as pertains to Peoria stockholders passed through your hands personally at the time they were taken up and trustees' receipts given therefor in the manner you have already testified?

Objected to same grounds.

A. I don't remember whether they passed through my hands or not.

119. Have you at this time any recollection as to the details of the actual delivery of those certificates of stock from the holders and owners themselves to the Equitable Trust Co.?

Objected to same grounds.

A. Only so far as my own are concerned.

120. What were the details of the delivery of your own stock certificates to the Equitable Trust Co. and through what channels did they pass in making such delivery?

Objected to same grounds.

A. To the best of my memory they were sent to Lyman A. Walton in his capacity as an officer of the Equitable Trust Co., or as treasurer of the Peoria Gas & Electric Company, but I don't remember which one of those two.

121. Did you yourself send them or was it done from your office?

A. I sent them myself from my office; that is my memory.

122. Did you at the same time send any other stock certificates of the same character?

(Objected to same grounds.)

A. Not that I remember.

123. Do you remember at any other time of sending any
1469 other of those stock certificates to the same person and for the same purpose?

A. No sir.

124. State whether or not at the time you so forwarded those stock certificates you had received your trustees' receipts for them?

Objected to same grounds as before.

A. I should say not.

125. But you did receive such a receipt, did you?

The MASTER: He stated that last night.

126. Whose signatures if you know were appended to this receipt to which you have just referred?

Objected to same grounds as before.

The MASTER: He has already answered that question, you asked him yesterday and he said his and John R. Walsh.

127. When, if you know, was the plan for placing the stock in the hands of trustees in the manner testified to by you adopted?

Objected to same grounds.

A. I don't remember.

128. Who, of the people interested in the Peoria Gas & Electric

Company, participated in the details which culminated in the perfection of that plan?

(Objected to same grounds.)

A. I don't remember.

129. Did any other person or corporation have anything to do with those arrangements?

(Objected to same grounds.)

A. I don't know.

130. State if that plan was not in substance all worked out by yourself and some others interested in the Peoria Gas & Electric Company prior to the time you received your charter in 1899?

Objected to same grounds.

A. No sir.

131. Are you still unable to state with any degree of accuracy when it was done?

1470 Objected to same grounds and because already asked and answered.

The MASTER: He may state more definitely if he can when it was consummated.

A. I don't know whether I have any record that would give me the date or not.

The MASTER: Give your personal knowledge as you now recollect it.

The WITNESS: I should say sometime between the first of June and the last of August 1901.

132. I will ask you if it is not true that all of that stock had been placed with the Equitable Trust Co. prior to the first of January 1901. I mean of the stock of complainant company.

Objected to same ground and also on the ground the witness has not stated all the stock was put up there but has expressly stated he don't know whether it was all put there or not.

The MASTER: He may answer if he knows.

A. I don't know.

133. Under what authority is the stock certificate book of complainant company in the possession of the Equitable Trust Co.?

A. I have answered that I thought on the order of the board of directors but I don't remember exactly.

134. Who was the custodian of it prior to the time it went into the possession of the Equitable Trust Co.?

Objected to as immaterial, irrelevant and incompetent.

A. I don't remember.

135. Was it ever in your possession?

Objected to same grounds.

A. Not that I remember.

136. Do you know how long it has been in the possession of the Equitable Trust Co.?

(Objected to same grounds.)

1471 A. I do not.

137. Since it was first delivered to that company has it been there continuously so far as your knowledge extends?

Objected to same grounds.

A. Yes sir.

138. Since the placing of this stock with the Equitable Trust Co., in the manner you have described, what if any meetings of stockholders of complainant company have been held in Peoria?

Objected to as immaterial.

A. I don't remember.

139. Do you know whether or not any have been held?

Objected to as immaterial.

A. No, I do not.

140. State whether or not under the arrangement by which that stock was placed with the Equitable Trust Co. the individual stockholders of complainant company are deprived of all rights of voting the same or control over it?

Objected to as incompetent, irrelevant, immaterial and also because it does not appear whether the instrument in question is in writing or not.

The MASTER: It does appear, Mr. Ritcher, that it is in writing as testified to by the witness yesterday.

Mr. RITCHER: Then we object to it as not the best evidence.

The MASTER: I don't think it the best evidence, Mr. Tichenor.

Mr. TICHENOR: If they will produce the document it will be at an end.

Mr. RITCHER: We object to this evidence as incompetent, immaterial and irrelevant and we think it all nonsense to go into it, but we do not desire to drop the introduction of any evidence these gentlemen desire and I am willing to produce the form of receipt

1472 issued under this agreement they are talking about so far as it does not show the number of shares held by the different parties, as that is a private personal matter with the different stockholders. I am willing to produce the form of the receipt and form of agreement.

The MASTER: You mean you are willing to produce a form of the contract under which the stock was surrendered to the trustees?

Mr. RITCHER: Yes sir, but I would have to get it from Chicago.

Mr. TICHENOR: We want the originals of all those documents.

The MASTER: You are entitled to have them or make oral proof of their contents.

Mr. RITCHER: So far as the holdings of different individuals are concerned I will say now, speaking as attorney for the Equitable Trust Co. who have the custody of this instrument, they will not divulge that until the court orders them to but I am willing to produce the form the trust Co. has of the document.

The MASTER: It appears from the testimony of this witness in whose custody those documents are but it does not appear from anything of record now that he is not willing to produce them and bring them into court if called upon. The mere fact this witness has not done it is no evidence to the mind of the master they cannot be procured by counsel for defendant.

Mr. RITCHER: So far as this witness is concerned we object to the last question as not the best evidence.

The MASTER: The master has sustained the objection on that ground. I do not think it proper to make oral proof of the contents of a written instrument.

141. Was that agreement to which reference has been made in duplicate, triplicate or otherwise?

A. I don't remember of but one.

142. Where is that one?

Ans. I don't know.

143. But there was such an agreement, you know that do you?

1473 A. That was my remembrance.

144. Is this agreement to which you refer the fundamental and primary one under which this stock was surrendered to the Equitable Trust Co.?

Objected to as calling for a conclusion of law.

The MASTER: I think, Mr. Tichenor, it is sufficient for your purpose to ascertain whether or not the stock was delivered under the terms of this agreement to which the witness has referred—asking him whether it is fundamental or primary is asking him to pass on the character of the instrument.

Mr. TICHENOR: Answer the question, Mr. Clarke, as modified by the master.

A. My remembrance is that it was.

145. State whether or not you in your official capacity, as president of the company or otherwise, have a duplicate of that agreement?

(Objected to same grounds.)

A. I do not remember.

146. Will you search for it and produce it if found at the coming in of court at two o'clock or at some other reasonable time?

Mr. RITCHER: We object on the same grounds and also if it has his individual signature attached thereto it is a confidential matter and he has no right to produce it any further than his signature is concerned and the signature of the trustees.

The MASTER: The question as to its admissibility can be determined after the instrument is produced.

A. I will make a search for it.

147. And produce it if found, will you?

Mr. RITCHER: Produce it here in court to have the master rule on it.

A. I will do so.

(Witness excused for the present.)

1474 GEORGE H. LITTLEWOOD recalled on behalf of defendants deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. Were you served with a subpœna this morning to produce certain papers in this case?

Ans. Yes sir.

2. Have you those papers in your possession and will you produce them?

A. Yes sir, I have two papers here. (Witness produces and hands papers to counsel which papers are marked for identification Exhibits "23" and "24.")

3. Look at the papers which you have just produced marked Exhibits "23 and 24" and state when they came into your possession with respect to the dates which they severally bear?

Objected to as immaterial, incompetent and irrelevant.

A. I don't know as I could tell you when I got them but I presume though about the dates on which they were issued.

4. Who delivered them to you?

(Objected to same grounds.)

A. I think they came to me by mail.

5. State whether or not those two documents, Exhibits "23 and 24" are now in exactly the same condition as they were when originally delivered to you except the exhibit marks put on by the master?

A. Yes sir, they have not been out of my box to my knowledge since I got them.

6. Were these papers received by you at the same time or at different times.

A. I think at different times; that is my impression.

Defendants' counsel offer in evidence the two documents identified by witness marked Exhibits "23" and "24."

Objected to as incompetent, immaterial and irrelevant and also because being private papers of the witness they cannot be
1475 left as evidence in this case.

The MASTER: I would suggest to counsel that he substitute certified copies for the originals so the originals can be returned to the witness.

Mr. RITCHER: We object to the substitution of copies if the witness has no objection to the originals going in evidence we insist they go into the evidence.

The MASTER: Have you any objection, Mr. Littlewood, to these originals being left in the custody of the master?

Mr. LITTLEWOOD: Yes sir, I want to keep them myself.

The MASTER: Now, gentlemen, have you any objection to copies being substituted for the originals as that does not waive your objection to the competency of the evidence at all.

Mr. RITCHER: I have no objection to the form goin- in but I object to any individual holdings going into evidence against the consent of the individual holder.

The MASTER: Your objection as to the competency of the evidence will be preserved and verified copies of the documents will be admitted subject to the objection.

Whereupon said documents were read to the master in the words and figures following, to-wit:

1476 EXHIBIT "23." I. C. Pinkney, Master.

Peoria Gas and Electric Company.

Incorporated under the laws of Illinois.

No. 4. 50 shares.

Stock Trust Certificate.

This is to certify that the undersigned have received from George H. Littlewood a certificate or certificates for fifty shares, of one hundred dollars each, of the capital stock of the Peoria Gas and Electric Company, to be held as provided in the agreement dated December 19, 1900, between holders of stock of said company and the undersigned, as managers, and the Equitable Trust Company, which said agreement is deposited with the said The Equitable Trust Company, and pursuant to which agreement this certificate is issued, and to all the terms and conditions of which agreement the holder hereof has assented by receiving this certificate. This certificate is not valid unless registered by the Equitable Trust Company, of Chicago, Illinois, as registrar, and is transferable only on the books of the man-

gers on surrender hereof, properly endorsed by the registered
older.

Dated this fourteenth day of January A. D. 1901.

SUMNER R. CLARKE,
JOHN R. WALSH,
Managers.

477 (Indorsed on lefthand side.)

Registered this seventeenth day of January 1901.

THE EQUITABLE TRUST COMPANY, *Registrar,*
By L. A. WALTON, *Vice-President.*

Entered:
C. HUNTOON,
Transfer Clerk.

(Indorsed on back.)

Know all men by these presents, that —— —— the undersigned, or value received, have bargained, sold, assigned, transferred, and by these presents do bargain, sell, assign and transfer unto —— —— all the property, right, title and interest represented by the within certificate, subject, however, to all the terms and conditions of the agreement referred to therein, and do hereby constitute and appoint — —— true and lawful attorney, irrevocably, for — and in — name and stead, but to — use, to sell, assign, transfer and set over all said property, right, title and interest, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that — said attorney or — substitute or substitutes shall lawfully do by virtue hereof.

478 In witness whereof — have hereunto set — hand- and seal- this — day of —— one thousand nine hundred and —.

—— ——.

Signed, sealed and delivered in presence of

—— ——.

EXHIBIT "24." I. C. Pinkney, Master.

Peoria Gas and Electric Company.

Incorporated under the laws of Illinois.

No. 22. 56 shares.

Stock Trust Certificate.

This is to certify that the undersigned have received from George I. Littlewood a certificate or certificates for fifty-six shares, of one hundred dollars each, of the capital stock of the Peoria Gas and

Electric Company, to be held as provided in the agreement dated December 19, 1900, between holders of stock of said company and the undersigned, as managers, and the Equitable Trust Company, which said agreement is deposited with the said The Equitable Trust Company, and pursuant to which agreement this certif-
1479 icate is issued, and to all the terms and conditions of which agreement the holder hereof has assented by receiving this certificate. This certificate is not valid unless registered by the Equitable Trust Company, of Chicago, Illinois, as registrar, and is transferable only on the books of the managers on surrender hereof, properly endorsed by the registered holder.

Dated this 28th day of August A. D. 1901.

SUMNER R. CLARKE,
JOHN R. WALSH,
Managers.

(Indorsed on lefthand side.)

Registered this 28th day of August 1901.

THE EQUITABLE TRUST COMPANY, *Registrar*,
By L. A. WALTON, *Vice-President.*

Entered:

W. P. KRAFT,
Transfer Clerk.

1480 (Indorsed on back.)

Know all men by these presents, that —— —— the undersigned, for value received, have bargained, sold, assigned, transferred, and by these presents do bargain, sell, assign and transfer unto —— —— all the property, right, title and interest represented by the within certificate, subject, however to all the terms and conditions of the agreement referred to therein, and do hereby constitute and appoint —— —— true and lawful attorney, irrevocably, for — and in — name and stead, but to — use, to sell, assign, transfer and set over all said property, right, title and interest, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that — said attorney or — substitute or substitutes shall lawfully do by virtue hereof.

In witness whereof — have hereunto set — hand- and seal- this — day of —— one thousand nine hundred and —.

—— ——. [SEAL.]

Signed, sealed and delivered in presence of
—— ——.

1481 Direct examination of SUMNER R. CLARKE resumed by Mr. Tichenor:

148. Look at the papers now shown you marked Exhibits "23" and "24" just read in evidence in this case and state whether or not they bear your genuine signature.

Ans. Yes sir.

148. Do you know whether or not they also bear the genuine signature of John R. Walsh?

A. I should say so; I will call it his signature at least.

150. Do you know whether or not they bear the genuine signature of L. A. Walton?

A. It looks like his signature.

151. State whether or not the agreement referred to in those exhibits purporting to bear date December 19, 1900, is the one to which you have testified as being in the custody of the Equitable Trust Co.?

A. These exhibits refresh my memory with reference to the question you asked me as to when this form of receipt was gotten up. I think I said it was between June and the latter part of August 1901. I will have to correct that answer and say it was near the date of December 19, 1900.

152. State whether or not the agreement referred to in those exhibits is the only one pertaining to the deposit of the stock certificates of complainant company with the Equitable Trust Co. so far as your knowledge extends?

Objected to as incompetent, immaterial and irrelevant.

A. So far as I remember.

153. State whether or not after refreshing your recollection from those two exhibits, you did affix your signature in any capacity to the agreement purporting to bear date December 19, 1900?

Objected to same grounds.

A. I don't remember.

154. Are you able to state from recollection whether or not
1482 you participated in the formation of that agreement of December 19, 1900?

(Objected to same grounds.)

A. I don't remember.

155. Under what authority was it prepared and executed if you know?

(Objected to same grounds.)

A. I don't remember.

156. Have you ever known?

(Objected to same grounds.)

A. I don't remember.

157. State whether or not that agreement as originally executed has ever since been and still is in full force and effect so far as you know.

(Objected to same grounds.)

A. So far as I know, it is.

158. State whether or not since that time there has been executed any agreement as an amendment to it, or as supplemental to it, pertaining to the same subject matter?

Objected to same grounds.

A. Not that I remember of.

159. If upon search in your own office for a duplicate of the agreement purporting to bear date December 19, 1900, you fail to find it will you also prosecute a careful search for the same purpose in the office of the Peoria Gas & Electric Company and if found there produce it?

Mr. RITCHER: I will say right here, if you can find a duplicate we will find it at the office of the company.

The MASTER: I understood Mr. Ritcher to say he would produce the agreement in court.

Mr. RITCHER: Produce the form of the agreement without the signatures and number of shares. I will probably have to send to Chicago for it as I asked Mr. Little this morning if he had a copy of it and he said he had not.

Mr. TICHENOR: I desire to say that we consider it a very
1483 material question, at least we so regard it, that we have the original of that document.

The MASTER: I understand that but you have not taken any steps so far as the master knows to obtain it.

Mr. TICHENOR: I understood the master to say that the copy would be sufficient or asked if it would not be sufficient and my answer to that is, it is not.

The MASTER: If the original is what you desire, there is no use wasting further time asking about a duplicate of it unless you get a duplicate of the original.

Mr. TICHENOR: Certainly that is what I mean. I want Mr. Clarke to produce a duplicate of the original if he can find it.

Mr. RITCHER: He will bring it into court if he can find it, and if there is a duplicate of the agreement in the company's office I will agree to bring it into court if Mr. Little can find it, but I do not desire in that way to admit that either Mr. Clarke or the company is the custodian of any original.

160. How many shares of stock of the Peoria Gas & Electric Co. of the original capitalization did you take and from which you received original stock certificates?

Objected to as incompetent, immaterial, irrelevant and imperti-

nt and an attempt to inquire into the private affairs of the wit-
ss who is not a party to this proceeding.

The MASTER: I do not think it the best evidence. It is apparent
the master there must have been a stock certificate book. It is
evidence that there were certificates of stock issued and the best
idence as to the shares of stock taken by this witness would be
e stock certificate book.

Mr. TICHENOR: Will you produce the stock certificate book, Mr.
itcher?

Mr. RITCHER: I cannot produce it at present. I will have
84 to investigate to find out whether it is held in a fiduciary ca-
pacity; if it is I would not permit the trust company to pro-
ce it. I will be able to tell you by tomorrow morning.

161. Does the stock certificate book correctly show by way of stubs
otherwise the stock certificates of complainant company that have
en issued to you?

Objected to as incompetent, immaterial, irrelevant and an attempt
inquire into the private affairs of the witness not a party to this
it.

A. I never saw the stubs of the stock book.

162. Do you know of any record of the company which does cor-
ctly show the stock which has been issued to you of either the
iginal or the increased capitalization?

Objected to same grounds.

A. Only by supposition. Those things are usually kept.

163. During your connection with the company, have you had
ything to do with a record in any form showing the issue of stock
the different stock holders?

(Objected to same grounds.)

A. I think not.

164. I will ask you again what amount of stock of the original
pitalization of the complainant company was issued to you?

Objected to same grounds as before.

A. I believe that is a personal matter which I should not be
bliged to answer.

165. Then you refuse to answer, do you?

A. At present, yes sir.

166. State whether or not all of the stock of the original capitaliza-
on of complainant company for which you subscribed was issued
you?

Objected to same grounds.

A. I think not.

185 167. To whom other than to yourself was any portion of
the stock represented by that subscription issued?

Objected to same grounds.

A. To John R. Walsh; I don't remember to what other parties.

168. Is it your best recollection that some of the stock in question was issued to others than yourself and to Walsh?

Objected to same grounds.

A. I think it was.

169. Can you state from recollection whether such other parties were residents of Peoria or of Chicago?

Objected to same grounds.

A. I think of both places.

170. To whom in Peoria was any of that stock issued?

Objected to same grounds.

A. I don't remember.

171. How much?

(Objected to same grounds.)

A. I don't remember.

172. How much of it was issued to John R. Walsh?

Objected to same grounds.

A. That I don't remember.

173. How much of it was issued to any other party resident in Chicago?

(Objected to same grounds.)

A. That I cannot remember.

174. How many assessments were made by the company upon the stock which was issued to you?

Objected to on the same grounds as before and on the further ground it has been all gone over by this witness in his former testimony.

The MASTER: I think the witness has already been interrogated on that question but if there is any doubt about it he may answer again.

1486 A. I remember of only one.

175. What was the amount of that, what per cent.?

Objected to same grounds as last question.

A. 20%.

176. Was that on the original capitalization, or was it on the original and increased capitalization?

Objected to as incompetent, immaterial, irrelevant and an attempt to inquire into the private affairs of the witness who is not a party to this proceeding.

177. Are you able to state from recollection the amount of that sessment in dollars?

(Objected to same grounds.)

A. $10,000.

178. What, if any portion of that has been repaid to you?

Objected to same grounds.

A. I do not think that assessment has been repaid.

179. Has any part of it been repaid to you in any form, either a dividend or otherwise?

(Objected to same grounds.)

A. I don't know that I can answer that question just now, I will swer it later on.

180. Can you answer it by reference to books of accounts or other emoranda in your possession?

(Objected to same grounds.)

A. It is from not quite understanding the question; I want to ink it over a little while and I will give you an answer to it.

181. How much of the increased capitalization of the complain-t company was issued to you?

(Objected to same grounds.)

A. That I do not care to answer, it being a private matter.

182. And you refuse to answer, do you?

A. For the present, yes sir.

183. How did the number of shares of the increase issued to you correspond with the number of shares issued to you of the 87 original capitalization?

(Objected to same grounds.)

A. That I do not wish to answer for the present.

184. What did you pay for the stock issued to you from the in-eased capitalization?

(Objected to same grounds.)

A. That I do not care to answer.

85. State whether or not you ever paid anything on such in-eased capitalization shares issued to you?

Objected to same grounds.

A. That I do not wish to answer.

186. Have certificates of any shares of stock of a portion of the creased capitalization been issued to you? In other words, have u received any portion of the increased capitalization in the shape stock certificates?

Objected to same grounds.

A. I will make the same answer as to the other questions.

187. State whether or not all receipts issued by yourself and Mr. Walsh for stock certificates to stockholders in the Peoria Gas & Electric Co. concerning which you have testified, are the same in form as Exhibits "23" and "24" in evidence in this case?

Objected to as incompetent, immaterial and irrelevant.

The MASTER: What difference does it make whether they are in the same form or not—how is that material?

Mr. TICHENOR: I think it material.

The MASTER: He may answer subject to the objection.

A. They were supposed to be the same.

188. Does that apply to the certificates representing the increased capitalization as well as to the original issue?

Objected to same grounds.

A. I think so.

189. State whether or not there is any other contract, or are other contracts, besides the one referred to in Exhibits "23" and "24" purporting to bear date December 19, 1900, pertaining to any matters involved in the deposit of the stock certificates representing the capitalization of the Peoria Gas & Electric Co.?

1488

Objected to as incompetent, immaterial, irrelevant and as already been asked and answered fully by the witness.

A. None that I know of.

190. Is there any persons or corporation other than yourself and Mr. Walsh, in the capacity concerning which you have testified, and the Equitable Trust Co. of Chicago, that have any control whatever or authority concerning those stock certificates?

Objected to as incompetent, immaterial, irrelevant.

A. No one that I know of.

The MASTER: I suppose by that question you mean under the agreement bearing date December 19, 1900?

Mr. TICHENOR: Yes sir.

191. State whether or not within your knowledge any contract of any character has ever been entered into between your company and the Peoria Gas Light & Coke Co. with reference to the gas business in Peoria, or with reference to the certificates of stock representing all or any portion of the capitalization of the two companies severally?

(Objected to same grounds.)

A. Not that I know of.

192. Do you know anything concerning the conditions under which the Peoria Gas & Electric Co. is at present furnishing gas to the Peoria Gas Light & Coke Co.?

(Objected to same grounds.)

A. Not to my personal knowledge.

193. Have you had any knowledge of those facts pertaining to service of that character in the past?

Objected to same grounds.

A. No sir.

194. State whether or not you had anything to do with the
1489 arrangements under which the complainant company began to furnish gas for the Peoria Gas Light & Coke Co.?

Objected to same grounds.

A. No sir.

195. Did you know at about the time it was consummated that it had been done?

(Objected to same grounds.)

A. Not to my personal knowledge.

196. Did you know that as an officer of the company or in any capacity whatever?

(Objected to same grounds.)

A. I think the records in the office would show; I have never seen them and don't know.

197. Is there a record of the Peoria Gas & Electric Co. that will show what you had to do with reference to the arrangement under which that company is now furnishing gas to the Peoria Gas Light & Coke Co.?

Objected to on the same grounds as before and also because the witness has said he didn't have anything to do with it and that the records would show what, if anything, he had to do with it.

THE MASTER: It is possible that there is a record that will show what the board of directors did and the witness may state if he knows whether there is a record in the possession of the company showing what, if anything, he had to do with that arrangement.

A. I think the company has a record of the transaction but that is all I know about it.

198. Do you know in what book that record is?

A. Only by supposition; I suppose it is in the regular record book.

199. The secretary's book you have referred to?

Ans. Yes sir.

200. How long prior to October 24, 1901, was the subject of such an arrangement first taken up between your company and
1490 the Peoria Gas Light & Coke Co. so far as your knowledge extends?

Objected to as incompetent, immaterial, irrelevant.

A. I don't know.

201. How long prior to the date mentioned did you know of it?

Objected to same grounds.

A. That I don't remember.

202. Where were you during the month of October, last year, and the preceding month?

(Objected to same grounds.)

A. I was away part of both months, but I could not tell what part and don't know that I could tell by reference to any memorada at my office. I was at Harbor point part of September and was south part of October.

203. State whether or not any written agreement was entered into between your company and the Peoria Gas Light & Coke Co. covering the subject of such proposed furnishing of gas by your company to the other?

(Objected to same grounds.)

A. Not that I know of.

204. Do you know for how long a period of time such an arrangement has been made? That is to say, how long it is to continue?

A. No sir.

205. Do you know anything about the terms under which your company is furnishing gas to the other company?

Objected to as incompetent, immaterial, irrelevant.

A. I do not.

206. Have you ever known?

(Objected to same grounds.)

A. I never inquired.

207. Have you ever heard the question discussed in any way among the parties interested in your company either directors or officers?

Objected to on same grounds and also because the witness has said he believes it to be a matter of record and the record
1491 would be the best evidence.

The MASTER: I think if he heard a discussion between the manager of the company or directors it would all be merged in what was finally done, no matter what the discussion was, but he may answer the question subject to the objection.

A. I may have heard it talked over but I am not positive.

208. Is there any person connected with your company who had special jurisdiction over a matter of that character?

Objected to as incompetent and immaterial.

A. Yes sir, the general manager, Mr. Little.

209. State whether or not Mr. Little as such general manager also

had authority to fix all terms connected with the furnishing of gas by your company to the Peoria Gas Light & Coke Co., as has been testified to?

Objected to as incompetent, immaterial and irrelevant.

A. Yes sir.

210. Have you at any time since your company began to supply the gas to the Peoria Gas Light & Coke Co. known the quantity that was being furnished?

(Objected to as incompetent and immaterial.)

A. No.

211. Have you at any time known at what rate it was being furnished?

(Objected to as incompetent, immaterial, not the best evidence.)

A. I think not.

212. Are you now or have you at any time since October 24, 1901, been familiar with the methods of handling the accounts pertaining to that gas?

(Objected to as incompetent and immaterial.)

A. No sir.

213. Have you at any time since your service began seen any statements between your company and the Peoria Gas Light & Coke Co. pertaining to that gas or pertaining to any other account?

1492 Objected to same grounds.

A. No sir.

214. Have you at any time during that period had any knowledge of the status of any such account?

(Objected to same grounds.)

A. No sir.

215. Who first, if you know, suggested an arrangement with respect to your company's furnishing gas to the Peoria Gas Light & Coke Co.?

(Objected to same grounds.)

A. I don't know.

215. When did you for the first time, if at all, learn that the Peoria Gas Light & Coke Co. propose to discontinue the manufacture of gas?

(Objected to same grounds.)

A. I don't remember.

216. Are you acquainted with the management of the Peoria Gas Light & Coke Co. as it has existed since the latter part of April, 1900?

Ans. No sir.

217. Do you know who the stockholders are?

Objected to as immaterial.
The MASTER: I do not see the materiality of it.
Mr. TICHENOR: I would like to have the question answered.
The MASTER: He may answer subject to the objection.

A. No sir.

218. Are you able to state from recollection how frequently since the month of December, 1900, the board of directors of the Peoria Gas & Electric Co. have held meetings?

Objected to as incompetent and immaterial.

A. Only by reference to the records.

219. Are you able to state how many of such meetings you have personally attended?

(Objected to same grounds.)

A. No sir.

220. You were asked this morning respecting a duplicate
1493 of the agreement you testified was deposited with the Equitable Trust Co. of Chicago? Did you succeed in finding that document?

A. I did not and I made up my mind that there was none made. I talked the matter over with Mr. Little and he said there was no duplicate made and after talking it over I remembered there was none I do remember the original but it is not in my possession and Mr. Little says there was no duplicate made.

221. In the former part of your examination you were asked how much of the increased capitalization was issued to you and how much to others and you stated you could not tell without reference to the records but could tell from such record? Are you now prepared to answer that question?

A. I have refused heretofore to state the number of shares I had, it being a personal matter, and I do not want to do it now unless obliged to.

222. I understand you still refuse to answer as to your own stock?

Ans. Yes sir.

223. Have you the information at this time from which you could testify as to that item?

Ans. Yes sir.

224. Are you also prepared to answer how much of the increased capitalization was issued to others than yourself?

A. I could not answer that for I have not the information.

225. There are records that will show those facts, are there not?

Ans. Yes sir.

226. Where are they?

A. I think they are with the transfer agent in Chicago—the Equitable Trust Co. I answered you yesterday I thought they were

in the possession of Mr. Little but I find on investigation that I was mistaken about that.

227. In the former part of your examination you stated that the records of the company would show where the stock certifi-
1494 cates issued to you from the original capitalization now are—can you now answer that question?

Objected to as incompetent and immaterial.

A. With the Equitable Trust Co. in Chicago. You previously asked me, "Does your company or any of its officers keep a certificate book." I find on investigation it does. You previously asked me whether, "You as president of the company have ever seen such certificates as have been issued either of the original stock or the increase." I answer that now, yes.

228. Did you sign all of them—are you able to answer now?

A. No, I am not able to answer that. You asked me the question yesterday, "State whether or not you have ever at any time either in your official capacity as president of the company or otherwise seen any agreement, contract or other document pertaining to the holdings of any or all of the present capitalization of your company." My answer to that is, not as an officer but as an individual. You asked me also, "In what capacity did you and Mr. Walsh issue the receipts for stock certificates to which you have referred," and I said I had forgotten how they were signed. I now answer, as trustees. You also asked me, "State whether or not you have given such receipts for the entire capitalization of complainant company as it is at the present time." I answer, the Equitable Trust Co. is registrar of receipts and transfer agent; the book of receipts is signed in blank and the trust company issues them on a deposit of the stock; the trust agreement authorizes any stock holder to deposit his stock and get a receipt if he wants it.

(The MASTER:)

229. Then you don't know whether or not yours and Mr. Walsh's receipts as trustees have been issued for all this stock—you don't know whether it has all been deposited or not?

A. No sir, I do not; anybody can get one of those receipts
1495 on depositing their stock.

(Mr. TICHENOR:)

230. In your examination you have declined to answer for the present a number of questions that have been propounded to you. Do you desire to consider further for the purpose of determining whether or not you will answer those questions and report your decision at a later sitting of the court?

A. Yes sir.

231. Will you report your decision tomorrow morning?

A. I would prefer to have my last testimony written out so that I may look it over and then answer.

232. That is, you mean to report as to whether or not you will answer any or all of the questions now under consideration?
A. Yes sir, I will come in at any time.

THEODORE J. MILLER, recalled on behalf of defendant, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. You are the same Theodore J. Miller that formerly testified in this case?
Ans. Yes sir.
2. Have you with you the secretary's book of the complainant company?
Ans. It is here.
3. Will you produce it?

Mr. RITCHER: I have it here.
Mr. TICHENOR: Will you let me look at it?
Mr. RITCHER: No sir.
Mr. TICHENOR: I want to examine it and examine this witness with reference to it.
Mr. RITCHER: I will say here to expidite this hearing that while we insist it is not competent, relevant or pertinent, we are ready to produce this secretary's book and have an officer of the
1496 company—preferably Mr. Little because he knows more about the business than anyone else—indicate what portions thereof refer to the gas business of the company and give counsel for defendant free access to those portions. We do not propose to turn over the record to enable counsel to pry into other business of this company which has nothing to with the issue in this case. We are perfectly willing, after Mr. Little indicates what portions pertain to matters material to the issues here, to submit the entire book to the master to determine whether anything has been omitted that is pertinent to matters material to the issues; but I think we should not be called upon to throw open a record of a company that is incorporated to do other business, and is doing other business, and permit counsel for defendant to go into other business of the company to determine whether it will be of any advantage to them in some other matter or not.
The MASTER: Is the stipulation of counsel satisfactory?
Mr. TICHENOR: I think not.
The MASTER: The rule is, as I understand it, to entitle you to the production of books, an affidavit must be filed setting out what the books contain which you desire to inspect as applicable to the matters in controversy. I do not think the master should permit you to go into the books for the purpose of a general investigation of their contents irrespective of its relevancy to the issues in the case.
Mr. TICHENOR: It seems to me as though it would be impossible for counsel for complainant from their standpoint to select the mate-

rial which in our judgment is proper and necessary for the defendant to have in this case.

The MASTER: The stipulation is broader than that. They propose to submit the whole record to the master for investigation to determine whether or not the matters indicated by the
1497 officer of the company are broad enough to cover the inquiry made by the issues in this case. Now, the master has an equal right with counsel to call for any books and testimony he may deem pertinent to such issues.

Mr. RITCHER: The master will certainly respect the rights of privacy as to questions not in issue here.

The MASTER: Yes sir, the master will undertake to protect that right so far as it is afforded within the limitations of the law. I do not think any court has ever laid down the rule that the books of a corporation or firm *is* open to inspection for any and all purposes.

Mr. TICHENOR: We do not maintain that, but from the very nature of the case it is impossible for us to indicate definitely in advance precisely the portions of the book we desire to use.

The MASTER: I am inclined to think my recollection of the rule is substantially correct. I do not think I have any right under the rules of evidence to admit anything more than I have indicated and unless counsel can show me I am wrong I will adhere to my ruling already announced. I think counsel should indicate, by taking a little time, those matters in controversy they desire to make proof of from the record of the minutes of the proceedings of this company and if that is done, as has already been indicated by counsel for complainant, that portion of the record will be submitted to counsel for defendant for their examination and use in this case. I will not unless it is insisted on by counsel for complainant require the filing of an affidavit in this case, as I understand the rule requires, because counsel for complainant is not insisting on that, but I do not think, Mr. Tichenor, the master has any authority under the law to go any further in that matter than has been already indicated.

If upon an examination of the record the master finds that
1498 matters not indicated by counsel for defendant has not been called to Mr. Little's attention and the records have not been opened to your inspection on matters material to the issues, the master will direct an inquiry on such matters as he finds are material. That privilege is accorded by counsel for complainant in the stipulation.

Do you desire to ask Mr. Miller any further questions?

Mr. TICHENOR: I think not.

Adjourned by agreement until Thursday, May 8, 1902, 10 a. m.

United States circuit — room, Government building,

PEORIA, ILLINOIS,
THURSDAY, *May* 8, 1902—10 o'clock a. m.

Parties met pursuant to adjournment,

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin, Mr. E. C. Ritcher and Mr. W. T. Abbott, appearing for complainant. Mr. Henry Mansfield and Mr. F. H. Tichenor appearing for defendant.

PHILO B. MILES, recalled on behalf of defendant, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. You are the same Philo B. Miles who has testified once before in this case?

Ans. Yes sir.

2. Were you subpœnaed yesterday or today to produce in court this morning certain documents?

A. I was subpœnaed this morning.

3. Have you those documents with you?

A. Yes sir, here are the certificates of stock you want or receipts rather. (Witness handing papers to counsel.) I think these are all the receipts I have so far as I know.

4. Preliminary to an examination upon these documents you have produced, I desire to ask you a few questions. My recollection is you testified in your former examination that within
1499 your knowledge but one stock assessment was ever made upon the stock of the Peoria Gas & Electric Co. and that was a 20 per cent. assessment?

A. That was the total assessment but I don't remember whether it was made in one assessment or not.

5. That was the only assessment ever made, so far as you know?

Ans. Yes sir.

6. And I think you testified you paid that 20 % assessment?

A. Yes sir.

7. State whether or not any portion of that has been paid back to you up to the present time?

Objected to as incompetent, immaterial, being a private matter of the witness with the company and not a subject of inquiry in this case, also assuming it was a part of this particular money that was paid back.

The MASTER: The witness may answer subject to the objection.

A. Yes sir, it was all paid back.

8. Are you able to state when that money was paid back to you?

Objected to as incompetent and immaterial and being a private

atter between the company and the witness is not a subject of in-
iry in this case.

A. I don't renember, it seems to me it was some time last fall.

9. Have you any record or memorandum or account that will
ow exactly when it was paid back?

Objected to as incompetent and immaterial.

A. I think so.

10. I wish you would make an examination and ascertain what
at date was and report it.

A. I will do that.

500 11. State whether or not you received in the way you have testified the exact sum which you paid on that 20 per cent. ssessment or more.

(Objected to same grounds.)

A. My impression is I received a little more than the original nount but I have forgotten how much; it seems to me there was me interest or something figured in.

12. Have you a record of some character which will disclose that ct also?

(Objected to as immaterial.)

A. The only record I have, I think, is a record showing the nount of money I received and the date.

13. I wish in making your examination you would also take into count the exact amount you received. State in what form that is repaid to you, whether by check, in currency or a draft?

Objected to as incompetent and immaterial.

A. My impression is it was paid by check or draft, I am quite rtain it was.

14. Who gave you the draft or check, if it was paid in that form?

(Objected to as immaterial.)

A. I think it was Mr. Little, the general manager of the com-
ny.

15. Did Mr. Little make any statement or explanation at that
ne?

Ans. I think not; none that I remember of.

16. When did you for the first time know that money was to be
id to you?

(Objected to as incompetent, and immaterial.)

A. When he gave me the check or draft, whichever it was.

17. Do you know, or have you ever known, why that money was
id to you?

(Objected to same grounds.)

A. No sir.

18. What if any inquiry did you make of Mr. Little at the time this check was given to you as to its purpose?

A. Made no inquiry.

1501 19. What, if any, arrangement was ever made with you in reference to the amount which you should be called upon to pay on your subscription to the original capitalization?

Objected to as incompetent, immaterial and assuming there was an arrangement made.

The MASTER: The question does not assume anything; he may answer subject to the objection.

A. There was no arrangement at all made with me.

20. State whether or not you remember the fact of the increase of the capital stock of complainant company?

Objected to as immaterial.

A. I remember that the capital stock was increased but I don't remember the particulars about it for the reason I was away, I think, at the time or something and was not present at the meeting; I happened to be away from home when there were two or three meetings called.

21. State whether or not you received any portion of that increased stock?

(Objected to as immaterial.)

A. Yes sir.

22. How many shares?

(Objected to as immaterial.)

A. 28.

23. Of what par or face value?

Objected to as immaterial.

A. $100. each.

24. What did you pay for those additional shares?

Objected to as immaterial, incompetent, irrelevant and an attempt to inquire into the private affairs of the witness who is not a party to this proceeding.

Mr. TICHENOR: In this case the witness is my own client and not yours; most of the others have been yours.

The MASTER: I think that objection is futile anyway; that 1502 is a privilege the witness can claim and not counsel. If the witness desires to avail himself of that privilege he can do so, otherwise he may answer subject to the objection.

A. I have never paid out any money yet.

25. State whether or not you have ever given any paper or other obligations for those additional shares?

Objected to as incompetent and immaterial.

A. No.

26. Prior to the time those additional shares were issued to you, state whether or not you signed any subscription list or expressed your desire to have them, either to the company or its management?

(Objected to same grounds.)

A. I don't think I did; I signed some papers for Mr. Clarke and Mr. Little but I don't remember how many; I don't think, though, I signed any for any additional stock.

27. When did you for the first time know that you were to get additional stock?

Objected to as incompetent, immaterial, irrelevant.

A. I did not know I was to get this last certificate until I got it.

28. Look at the papers now shown you which you have produced this morning, marked by the master "Exhibits 25" and "26," and state the circumstances under which they came into your possession?

Objected to same grounds.

A. It seems to me, although I am not certain, that I received the certificate for 25 shares in the place of another certificate I had for 25 shares of stock in the Peoria Gas & Electric Co.

29. To which exhibit are you now referring?

A. Exhibit "25."

30. From whom did you receive it?

1503 Objected to as immaterial.

A. I don't know whether I received it from the manager here or from Chicago.

31. State whether or not it is now in the same condition as it was at the time it came into your possession originally?

Objected to as immaterial.

A. Yes sir.

32. What was the amount of your original stock subscription?

Objected to as immaterial and not the best evidence.

The MASTER: I think that is true.

Mr. TICHENOR: I would like to have the witness answer.

The MASTER: He may answer subject to the objection.

A. 25 shares—$2,500.

33. And those shares were issued to you, were they?

Objected to same grounds.

A. Yes sir.

34. What, if anything, did you do with your original certificate

for the 25 shares of stock in complainant company at or about the time you received the paper marked "Exhibit 25"?

Objected to as incompetent and immaterial.

A. If I remember it, I delivered it to the manager of the company and received this in return.

35. Do you refer to Mr. Little?

A. I am not certain just who I delivered that to, I paid so little attention to it at that time.

36. Has your original stock certificate been in your possession at any time since you surrendered it?

Objected to as immaterial.

A. No sir, nor have I seen it since I received this.

37. Within your own knowledge, where is it?

Objected to as incompetent and immaterial.

1504 A. I don't know where it is.

38. When with reference to the date it bears, did you receive Exhibit "26"?

(Objected to as immaterial.)

A. I must have received that certificate somewhere about the 28th of August, 1901, the day of its date, although I am not certain I received it just at that time.

39. State whether or not the certificate issued to you for 28 shares of the increased capitalization, as you have testified, had been delivered to you prior to the time you received Exhibit "26"?

(Objected to as immaterial.)

A. No sir.

40. When was the original stock certificate for the 28 shares delivered to you?

(Objected to as immaterial.)

A. I don't know how that is, I paid so little attention; I got these papers and had our boys put them in the safe and I paid so little attention I could not tell whether that was given to me for 28 shares I had had before or not; I am inclined to think not.

41. Would your record, or any memorandum in your office, show whether or not that certificate had actually been issued to you?

(Objected to as incompetent and immaterial.)

A. No sir, I think not for the reason this was a personal matter and our books and papers generally contain only a record of our firm business.

42. And you do not keep personal books that will show matters of that kind?

Ans. No sir.

43. Do you know where the certificate of stock for which that receipt Exhibit "26" was given is?

(Objected to as immaterial.)

A. No sir.

44. Have you ever seen it since that receipt was given to you?

Objected to as immaterial.

A. No sir.

1505 45. State whether or not you signed the agreement referred to in each of the exhibits you have identified as bearing date December 19, 1900?

Objected to as incompetent, immaterial, not the best evidence.

A. Yes sir I did.

46. Who presented it to you for your signature?

Objected to as immaterial.

A. Mr. Little and Mr. Sumner R. Clarke, as I remember it.

47. What, if any, conversation did you have with them at that time with reference to it?

Objected to as immaterial, incompetent, irrelevant and calling for conversations occurring before the execution of the instrument.

A. I think I told them in the first place I did not know whether I would sign it or not; they wanted to know what was the reason.

48. Do you remember which one it is that made that inquiry?

A. No, I don't remember whether it was Mr. Clarke or Mr. Little.

49. What reason if any did you give?

Objected to as incompetent and immaterial.

The MASTER: I don't think that material.

Mr. TICHENOR: I would like to have him answer it.

The MASTER: He may answer subject to the objection.

A. Well, I was a little dissatisfied with the way matters had gone.

50. What did you tell them at that time?—what was your reply to them?

(Objected to same grounds.)

The MASTER: I don't think that competent, for I don't think any reason he gave at the time could bind the company in any way, but, as you desire to press the question, the witness may answer

1506 subject to the objection.

A. I told them that the management of the company, or somebody, had raised the price of gas instead of lowering it and I didn't think we had treated the people exactly fair or according to our representations and under those circumstances I did not know whether I would sign the paper or not.

Mr. RITCHER: Complainant objects to the answer on the same grounds that the question was objected to and moves the court to exclude it.

51. State whether or not you had at that time seen the agreement to which referrence has been made and concerning which you have been testifying?

(Objected to as incompetent and immaterial.)

The MASTER: He has already said he signed it; how does it become material whether he signed it at that time or not?

Mr. TICHENOR: I don't know whether it is material or not; I will see later. I would like to have the question answered.

The MASTER: He may answer.

A. I did not sign it at that time. (Mr. Clarke said he would come in again with the paper sometime when I was not very busy.)

Complainant objects to that part of the foregoing answer enclosed in brackets as not responsive, and moves the court to exclude it.

52. What if anything further did Mr. Clarke or Mr. Little say to you concerning the subject?

Objected to as incompetent and immaterial, irrelevant and hearsay.

A. Mr. Clarke said, "This matter will come out all right and satisfactory to you, I think, in the long run but," he said, "you are busy and I will come in again."

53. Did Mr. Clarke or Mr. Little, or both of them, return to you for the same purpose?

1507 Objected to as incompetent and immaterial.

A. Mr. Clarke came in later.

54. And it was on the occasion of the second visit you signed it, did you?

Ans. Yes sir.

55. On that second visit did you have any conversation with Mr. Clarke further pertaining to that subject?

Objected to as incompetent, immaterial and irrelevant.

A. Mr. Clarke repeated what he had said before; he said, "I am satisfied this gas question will come out all right in the end and satisfactory to you." And I am inclined to think he said, "Things cannot always go exactly as you want them to," or something of that sort.

56. Have you since that time had any conversation with either of them with reference to the same subject?

Objected to same grounds.

The MASTER: I don't think that competent.

Mr. TICHENOR: I would like to have him answer it.

The MASTER: He may answer it subject to the objection.

A. No sir, I don't think anything has been said to me on that subject since by either Mr. Clarke or Mr. Little.

57. State whether or not you have had any conversations with any person whose name is affixed to "Exhibit 19" with reference to the increased price of gas except as you have now stated?

Objected to as incompetent, immaterial and irrelevant and because the witness has already been interrogated fully on his previous examination with reference to all that took place between himself and the other parties whose names are affixed to "Exhibit 19."

The MASTER: I don't think it competent unless it is confined to officers who were charged with the management of the affairs of complainant company.

1508 Mr. TICHENOR: I would like to have it answered.

The MASTER: He may answer subject to the objection.

A. Yes sir, I had a conversation with Ben Warren, Jr.

58. What was that conversation?

Objected to same grounds as last interrogatory was objected to.

The MASTER: Whether that be true or not, I am inclined to think, as already suggested, unless the conversation was had with officers charged under the law with the management of the company's affairs, it is not competent, especially a conversation had subsequent to the adoption of this ordinance in question.

Mr. TICHENOR: I would like to have the question answered.

The MASTER: He may answer subject to the objection.

A. The conversation was with regard to the price of gas that had been established by the company. Mr. Warren and I were taking breakfast together in Chicago and he said he had just ascertained that the company had made a price for gas—I don't remember just what that price was but it seems to me it was $1.25 gross and $1.15 net. Both of us thought—Interrupted.

The MASTER: State the conversation and not your conclusions.

The WITNESS: I said to him that was considerably higher than we had thought the company would establish the price and he agreed with me—

(Objected to.)

The MASTER: State what was said.

The WITNESS: I am trying to get at what was said as nearly as I can but I don't think it would read very well if I told all I said and all he said.

The MASTER: That is not for you to determine; the conversation has been asked for and admitted over the ruling of the master, now state the conversation as nearly as you can.

The WITNESS: I do not want to do that.

Mr. TICHENOR: I will not press the question under the statements of the witness.

1509 Defendant's counsel offers in evidence the two documents identified by the witness marked by the master "Exhibits 25" and "26."

Objected to as incompetent, immaterial and tending to prove no fact in issue in this case and not tending to connect the complainant or defendant in this case in any way with the transaction therein alleged and also because it is a private matter between individuals not parties to this proceeding and private documents of the witness.

The MASTER: I suppose counsel for complainant has no objection to these documents going in the record the same way Exhibits "23" and "24" were put in.

Mr. IRWIN: We object to their substituting copies.

Mr. TICHENOR: I will read them into the record, then.

The MASTER: I think not. You may ask leave to substitute verified copies of them and the master will grant that leave.

Mr. TICHENOR: I desire to do so.

The MASTER: You may substitute verified copies of the originals for the record.

Whereupon said documents were read to the master in the words and figures following: to-wit:

1510 EXHIBIT "25." I. C. Pinkney, Master.

Peoria Gas and Electric Company.

Incorporated under the laws of Illinois.

No. 8. 25 shares.

Stock Trust Certificate.

This is to certify that the undersigned have received from Philo B. Miles a certificate or certificates for twenty-five shares of one hundred dollars each, of the capital stock of the Peoria Gas and Electric Company, to be held as provided in the agreement dated December 19, 1900, between holders of stock of said company and the undersigned, as managers, and the Equitable Trust Company, which said agreement is deposited with the said The Equitable Trust Company, and pursuant to which agreement this certificate is issued, and to all the terms and conditions of which agreement the holder hereof has assented by receiving this certificate. This certificate is not valid unless registered by the Equitable Trust Company, of Chicago, Illinois, as registrar, and is transferable only on the books of the managers on surrender hereof, properly endorsed by the registered holder.

Dated this fourteenth day of January A. D. 1901.

SUMNER R. CLARKE,
JOHN R. WALSH,
Managers.

1511 (Indorsed on lefthand side.)

Registered this seventeenth day of January 1901.

THE EQUITABLE TRUST COMPANY, *Registrar*,
By L. A. WALTON, *Vice-President*.

Entered:
C. HUNTOON,
Transfer Clerk.

(Indorsed on back.)

Know all men by these presents, that —— ——, the undersigned, for value received, have bargained, sold, assigned, transferred, and by these presents do bargain, sell, assign and transfer unto —— —— all the property, right, title and interest represented by the within certificate, subject, however, to all the terms and conditions of the agreement referred to therein, and do hereby constitute and appoint — —— true and lawful attorney, irrevocably, for — and in — name and stead, but to — use, to sell, assign, transfer and set over all said property, right, title and interest, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that said — attorney or — substitute or substitutes shall lawfully do by virtue hereof.

1512 In witness whereof — have hereunto set — hand– and seal– this — day of —— one thousand nine hundred and —.

—— ——. [SEAL.]

Signed, sealed and delivered in presence of
—— ——.

EXHIBIT "26." I. C. Pinkney, Master.

Peoria Gas and Electric Company.

Incorporated under the laws of Illinois.

No. 27. 28 shares.

Stock Trust Certificate.

This is to certify that the undersigned have received from P. B. Miles a certificate or certificates for twenty-eight shares of one hundred dollars each, of the capital stock of the Peoria Gas and Electric Company, to be held as provided in the agreement dated December 19, 1900, between holders of stock of said company and the
1513 undersigned, as managers, and the Equitable Trust Company, which said agreement is deposited with the said The Equitable Trust Company, and pursuant to which agreement this certificate is issued, and to all the terms and conditions of which

agreement the holder hereof has assented by receiving this certificate. This certificate is not valid unless registered by the Equitable Trust Company, of Chicago, Illinois, as registrar, and is transferable only on the books of the managers on surrender hereof, properly endorsed by the registered holder.

Dated this 28th day of August A. D. 1901.

SUMNER R. CLARKE,
JOHN R. WALSH,
Managers.

(Indorsed on lefthand side.)

Registered this 28th day of August 1901.

THE EQUITABLE TRUST COMPANY, *Registrar*,
By L. A. WALTON, *Vice-President.*

Entered:
W. P. KRAFT,
Transfer Clerk.

(Indorsed on back.)

1514 Know all men by these presents, that —— —— the undersigned, for value received, have bargained, sold, assigned, transferred, and by these presents do bargain, sell, assign and transfer unto —— —— all the property, right, title and interest represented by the within certificate, subject, however, to all the terms and conditions of the agreement referred to therein, and do hereby constitute and appoint —— —— true a-d lawful attorney, irrevocably, for — and in — name and stead, but to — use, to sell, assign, transfer and set over all said property, right, title and interest, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that — said attorney or — substitute or substitutes shall lawfully do by virtue hereof.

In witness whereof — have hereunto set — hand- and seal- this — day of —— one thousand nine hundred and —.

—— ——. [SEAL.]

Signed, sealed and delivered in presence of

—— ——.

1515 Cross interrogatories by Mr. IRWIN:

1. I understood you to say you paid an assessment of 20 % on the stock subscribed by you?

Ans. Yes sir.

2. That was paid on call from the board of directors of the company, as you understood?

Ans. Yes sir.

3. You testified about receiving some money back—do you know who paid you that money?

A. Mr. Little, I believe handed me that check or draft.

4. Do you know where that money came from that was paid to you?

Ans. I don't remember who signed the check or draft.

5. As a matter of fact, you don't know whether that money came from the complainant company or not do you?

Ans. No sir.

6. And when you say that money was returned to you, you don't know whether it was that particular money or was intended to be a return of that particular money or not, do you?

A. I understood it was a return of the money I had paid.

7. Don't state what you understood. As a matter of fact, you don't know whether it was intended to be a return of that particular money or whether it came from the company or not do you?

A. No, I do not.

8. I understood you to say that this receipt you hold marked "Exhibit 26" was a part of your share of the increased capitalization stock?

Ans. That is what I understood.

9. Of your own knowledge, do you know whether that is so or not?

Ans. I don't remember that I said it was my share of the increased stock; I remember of saying it was stock I received—increase stock.

11. You didn't pay anything for that stock?

Ans. No sir.

12. You still retain it, however, and still claim it?

A. Yes sir.

13. As a matter of fact, you don't know whether this "Exhibit 26" represents a part of the increased stock or original stock of the company, do you?

1516

A. No, I do not personally; as a matter of fact, I don't know what it represents.

Re-direct interrogatories by Mr. TICHENOR:

1. Have you any knowledge as to why 28 additional shares were issued to you instead of 25?

Objected to as not proper re-direct, incompetent and immaterial.

The MASTER: I don't think it proper re-direct, still I think it competent and the witness may give his own knowledge on the subject.

A. No sir.

2. At the time you signed this agreement referred to in the two exhibits you have produced was it one copy or was it in duplicate or triplicate?

(Objected to as incompetent and immaterial.)

A. I don't remember.

OLIVER J. BAILEY, recalled on behalf of defendant, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. You are the same Oliver J. Bailey that has testified once before in this case?

Ans. I am.

2. Were you subpœnaed last night or this morning to produce certain papers in connection with this inquiry?

A. I was so subpœnaed this morning and I have the papers with me.

3. As I remember your former testimony, you testified you paid a 20 % assessment upon your stock subscription to the original capitalization?

1517 A. As I recollect it, I was not asked that question.

4. Did you pay any assessment upon your original subscription?

Ans. I paid a 20% assessment upon my original stock subscription.

5. State whether or not that was the only assessment made within your knowledge?

A. That was the only assessment I had knowledge of; the only assessment paid by me.

6. State whether or not any portion of that assessment paid by you has been refunded in any form?

Objected to as incompetent, immaterial, irrelevant and inquiring into the personal affairs of the witness who is not a party to this suit.

A. I received a return of the amount advanced by me as an assessment supposed to be a return of such assessment.

7. Was the amount received exactly the same as the amount paid by you on that assessment or was it greater, if you remember?

A. It was the same so far as the cash return was concerned.

8. In what form was that paid, if you remember?

Objected to as immaterial.

A. It was either by draft or check; I think it was a check.

9. Can you state from recollection whose check it was?

Objected to as immaterial.

A. My recollection is not absolute but I think the check was signed by Mr. Little, the general manager of complainant company.

10. Who presented it to you or did it reach you through the mail?

(Objected to as immaterial.)

A. It was presented to me at my office; I think it was presented to me by a clerk from the complainant company's office who
1518 brought with the check a form of receipt for me to sign and I signed such receipt.

11. State whether or not any explanation was made to you at that time with reference to the check or refund?

A. I don't think there was at the time.

12. State whether or not you had ever receive- any explanation for the payment of that money to you?

Objected to same grounds and also calling for something the witness might have heard on the street corner and not from anyone in authority.

Mr. TICHENOR: I am speaking with reference to people connected with the complainant company only in an official capacity.

A. So far as I recollect not subsequent to its return to me.

13. State whether or not prior to the time the payment was made to you you knew it was to be done?

Objected to as incompetent and immaterial.

A. I don't know that I knew it was to be done. (But I was not greatly surprised when I received it.)

Complainant objects to that part of the answer enclosed in brackets as not responsive and moves the court to exclude it.

14. At the time you signed the subscription list for the original capitalization, state what if any arrangement you had with the company or with the others signing the same list with reference to the amount which you should be required to pay upon your subscription?

Objected to as incompetent, immaterial and irrelevant and also on the ground that when he signed the subscription as appears by the evidence there was no company to contract with, as it was not fully organized; also, because no one was authorized to contract with the company at that time.

A. I never had any understanding with anyone that I would not be called upon to pay the full amount of my stock subscrip-
1519 tion in assessments.

15. Will you now produce the papers—Interrupted.

Mr. RITCHER: In order to shorten the matter, the complainant will admit that Mr. Bailey holds certificates in the same form as Mr. Miles, the preceding witness, holds them in every respect, except the name and amount. I don't think the witness ought to be asked to disclose the amount of his holding in the company unless the witness is willing to state.

Mr. TICHENOR: If the witness will not disclose that, he has a right to refuse. I desire to ask some questions in regard to it.

16. Will you produce the papers you were required by the subpœna to produce?

A. I believe these are the papers the subpœna calls for. (Papers produced by the witness marked "Exhibits 27" and "28" for identification.)

17. Look at "Exhibits 27" and "28" now shown you and state when you received Exhibit "27" with reference to the date it bears?

Objected to as immaterial.

The MASTER: I don't see in view of the stipulation why it is necessary to go into that inquiry.

Mr. TICHENOR: If they will make a stipulation that covers all the inquiry we will accept it.

Mr. RITCHER: If the stipulation is not to be accepted, we would like to withdraw it.

The MASTER: It may stand.

A. I think near its date January 14, 1901.

18. State whether or not at or about that time you surrendered on that receipt your original stock certificate given complainant company?

(Objected to as incompetent and immaterial.)

A. I had surrendered my stock certificate prior to that time, and taken a temporary receipt which was to be held and to be
1520 surrendered on presentation of this receipt.

19. To whom did you surrender your original stock certificate?

Objected to as immaterial.

A. I think I surrendered it to the clerk of the complainant company on the request of Mr. Little, the manager, that I do so.

20. Can you state in a general way about how long before this permanent receipt was given to you you surrendered your certificate as you have stated?

A. I could not say certainly but I think some 10 days prior to that time.

21. Do you know of your own knowledge where your original stock certificate is or has been since the time you surrendered it, as you have testified?

A. Not beyond what is shown on the face of this receipt.

22. Have you seen it since that time?

Ans. I have not.

23. State whether or not you received any other stock certificate or any part of the capital stock of complainant company?

A. I received the certificate marked "Exhibit 28."

24. I mean the original stock certificate for shares—not the receipt?

Objected to as incompetent, immaterial and irrelevant.

A. No sir, I never received any other stock certificate than the one I have already referred to.

25. When with reference to its date did you receive the stock certificate receipt you have identified marked "Exhibit 28"?

Objected to same grounds.

A. I think near its date, I don't remember exactly.

26. When did you for the first time know you were to receive that receipt?

(Objected to as immaterial.)

A. Only a short time prior, I knew or had reason to believe I would receive a receipt for some amount but I did not know what amount.

1521 27. State whether or not such advice came to you through complainant company or any of its officers?

Objected to as incompetent and immaterial.

A. Yes sir, that advice came to me through Mr. Little, the manager of the company.

28. State whether or not at that time, or at any other time, he made any explanation to you why you were to receive that additional stock?

(Objected to same grounds.)

A. Well, his explanation in general terms was that the capital stock had been increased and by virtue of my original certificate I was entitled to the benefit of the increase.

29. What if anything had you to do with increasing the capital stoke of complainant company?

(Objected to as immaterial.)

A. So far as I remember I had nothing to do with it and knew nothing about it.

30. So you know why the capital stock was increased?

Objected to as incompetent, immaterial; not the best evidence.

A. I have no specific knowledge along that line.

31. What did you pay for the shares of stock represented by certificate receipt Exhibit "28"?

Objected to as incompetent, immaterial, and being a private matter of the witness—Interrupted.

The MASTER: The witness is one of the oldest members of the Peoria bar and he can claim the exemption if he desires to; he understands the rule of law as well as anybody connected with this case.

A. I paid nothing for such certificate receipt except as I paid for it through the earning power of the original certificate issued to me.

32. You never paid any money for it?
Ans. No.

1522 33. Have you ever seen the stock certificate for which the receipt Exhibit "28" was given?

Ans. I never have.

34. Do you know where it is?

A. I do not except as is stated on the face of the receipt.

35. State whether or not you signed the agreement referred to in that receipt purporting to bear date December 19, 1900?

Objected to as immaterial.

A. I did.

36. Who presented it to you?

(Objected to as immaterial.)

A. My recollection is that agreement was presented to me by Sumner R. Clarke.

37. Are you able to state from recollection whether it was in duplicate or in triplicate?

Objected to as incompetent and immaterial.

A. I am quite sure it was in duplicate and possibly in triplicate.

38. State whether or not you had any conversation with Mr. Clarke at the time of its presentation to you with reference to the subject matter then under consideration?

Objected to as incompetent and immaterial.

A. If I did it was only general in its nature and I have no specific recollection of it at this time.

39. Have you seen that agreement since about the time you signed it?

(Objected to same grounds.)

A. No sir.

40. Do you know where it is?

(Objected to same grounds.)

A. I do not.

41. What, if any, stockholders' meeting of the company have you attended since December 19, 1900?

Objected to as already gone over in the former testimony of the witness.

1523 A. I am unable from recollection now to fix any definite dates of the stockholders' meetings I have attended; I can only say the last stockholders' meeting I attended was the one shortly prior to the fixing of the gas rate that was to prevail in Peoria.

42. Does your answer refer to the rate fixed on or about July 31, 1900, and for the purpose of refreshing your recollection I will call

your attention to that portion of defendant's answer pertaining to that subject.

Objected to as incompetent and immaterial.

A. I could not say with certainty but I think it was at a later date than that.

Defendant's counsel offers in evidence the original documents identified by the witness marked "Exhibits 27" and "28" and asks leave to substitute verified copies for the record in place of the originals.

Objected to as incompetent, immaterial and improper.

The MASTER: Verified copies may be substituted for the originals and the documents admitted subject to the objection.

Whereupon said documents were read to the master in the words and figures following, to-wit:

1524 EXHIBIT "27." I. C. Pinkney, Master.

Peoria Gas and Electric Company.

Incorporated under the laws of Illinois.

No. 2. 25 shares.

Stock Trust Certificate.

This is to certify that the undersigned have received from O. J. Bailey a certificate or certificates for twenty-five shares of one hundred dollars each, of the capital stock of the Peoria Gas and Electric Company, to be held as provided in the agreement dated December 19, 1900, between holders of stock of said company and the undersigned, as managers, and the Equitable Trust Company, which said agreement is deposited with the said The Equitable Trust Company, and pursuant to which agreement this certificate is issued, and to all the terms and conditions of which agreement the holder hereof has assented by receiving this certificate. This certificate is not valid unless registered by the Equitable Trust Company, of Chicago, Illinois, as registrar, and is transferable only on the books of the managers on surrender hereof, properly endorsed by the registered holder.

Dated this fourteenth day of January A. D. 1901.

SUMNER R. CLARKE,
JOHN R. WALSH,
Managers.

1525 (Indorsed on lefthand side.)

Registered this seventeenth day of January 1901.

THE EQUITABLE TRUST COMPANY, *Registrar*,
By L. A. WALTON, *Vice-President.*

Entered:
C. HUNTOON,
Transfer Clerk.

(Indorsed on back.)

Know all men by these presents, that —— —— the undersigned, for value received, have bargained, sold, assigned, transferred, and by these presents do bargain, sell, assign and transfer unto —— —— all the property, right, title and interest represented by the within certificate, subject, however, to all the terms and conditions of the agreement referred to therein, and do hereby constitute and appoint —— —— true and lawful attorney, irrevocably, for — and in — name and stead, but to — use, to sell, assign, transfer and set over all said property, right, title and interest, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that — said attorney or — substitute or substitutes shall lawfully do by virtue hereof.

In witness whereof — have hereunto set — hand- and seal- this — day of —— one thousand nine hundred and —.

—— ——. [SEAL.]

Signed, sealed and delivered in presence of

—— ——.

1526 EXHIBIT "28." I. C. Pinkney, Master.

Peoria Gas and Electric Company.

Incorporated under the laws of Illinois.

No. 28. 28 shares.

Stock Trust Certificate.

This is to certify that the undersigned have received from O. J. Bailey a certificate or certificates for twenty-eight shares, of one hundred dollars each, of the capital stock of the Peoria Gas and Electric Company, to be held as provided in the agreement dated December 19, 1900, between holders of stock of said company and the undersigned, as managers, and the Equitable Trust Company, which said agreement is deposited with the said The Equitable Trust Company, and pursuant to which agreement this certificate is issued, and to all the terms and conditions of which agreement the holder hereof has assented by receiving this certificate. This certificate is not valid unless registered by the Equitable Trust Company, of Chicago, Illinois, as registrar, and is transferable only on the books of the managers on surrender hereof, properly endorsed by the registered holder.

Dated this 28th day of August, A. D. 1901.

SUMNER R. CLARKE,
JOHN R. WALSH,
Managers.

1527 (Indorsed on lefthand side.)

Registered this 28th day of August, 1901.

THE EQUITABLE TRUST COMPANY, *Registrar*,
By L. A. WALTON, *Vice-President*.

Entered:
W. P. KRAFT,
Transfer Clerk.

(Indorsed on back.)

Know all men by these presents, that —— —— the undersigned, for value received, have bargained, sold, assigned, transferred, and by these presents do bargain, sell, assign and transfer unto —— —— all the property, right, title and interest represented by the within certificate, subject, however, to all the terms and conditions of the agreement referred to therein, and do hereby constitute and appoint —— —— true and lawful attorney, irrevocably, for — and in — name and stead, but to — use, to sell, assign, transfer and set over all said property, right, title and interest, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that — said attorney or — substitute or substitutes shall lawfully do by virtue hereof.

1528 In witness whereof — have hereunto set — hand- and seal- this — day of —— one thousand nine hundred and —.

—— ——. [SEAL.]

Signed, sealed and delivered in presence of
—— ——.

1529 ROBERT D. CLARKE recalled on behalf of defendants, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. You are the same Robert D. Clarke who formerly testified in this case?

Ans. I am.

2. Have you been served with a subpœna to produce certain papers in connection with this inquiry?

Ans. I have.

3. Have you those papers with you?

A. I have not; I looked for them but I could not locate them this morning; I thought I had some but I don't believe I have got them unless my father has them.

4. Will you make further search for them and produce them if you can find them?

Ans. Yes sir, if I can find them.

5. My recollection is you testified on your former examination you had paid a 20 per cent. assessment on the amount of the original capitalization of the complainant company subscribed for by you?

A. I don't think I testified to it but I think I paid that or the assessment was paid for me.

6. State whether any portion of that assessment has been paid back to you in the form of dividends or otherwise?

Objected to as incompetent and immaterial.

A. I have received no dividend.

7. State whether or not any money has been paid to you since that time by the complainant company or anyone connected with it?

Objected to same grounds.

A. It has been paid to me direct, as I recall.

8. State whether or not you have ever sold any part or portion of the shares of stock covered by your original subscription in the complainant company?

Objected to as incompetent, immaterial and a private mat-
1530 ter of the witness he is not required to divulge unless he sees fit.

A. I think, if my recollection serves me right, I endorsed my original stock over for a loan.

9. Did you ever sell the shares?

A. No, not to dispose of it or receive anything for it.

10. State whether or not any part or portion of the amount you paid on your 20% assessment on the stock has ever been paid back to you?

A. It might have been paid to me and I would not have known it; I recall something of that kind but I don't know whether it was paid to me and endorsed over on some papers or whether I received it myself.

11. Who paid it to you?

Ans. I don't recall.

12. Was it paid to you by F. W. Little, general manager of the complainant company?

Objected to same grounds.

A. I think not.

13. State whether or not it came through that office?

A. I think not.

14. State whether or not it came through the Equitable Trust Co. in Chicago or John R. Walsh?

Objected to as incompetent and immaterial.

A. My memory is pretty vague on that matter, I don't recall much about it.

15. Do you remember of paying the 20% assessment on your stock?

(Objected to same grounds.)

A. I remember of making arrangements to pay it; I did not pay it myself.

16. What amount of money was paid back to you, as you have testified?

Objected to because witness has not testified to any money
1531 having been paid back to him.

A. I don't recall.

17. Have you any memorandum of any character that will refresh your recollection upon that question.

Objected to as incompetent and immaterial.

A. I have an entry of the stock on my books carried as $1.00.

18. Why is it carried in that form?

A. I carry a great many matters and a great many things in that form; if I receive any stock I carry it as a dollar so I will not fool myself on book entries.

19. How many payments have you ever received back on account of the assessment which you state you paid on your stock subscription?

Objected to as assuming he did receive any back; the witness has stated he never received any dividend back so far as he knows.

The MASTER: I think that is true but he may answer.

A. I do not recall much about this matter at all for I have not paid much attention to it.

20. Look at "Exhibit 28" now shown you and state whether or not you have ever seen a paper like that in form and substance?

A. I think I have but I could not state as to the wording on it.

21. Are the papers in your possession, or supposed to be in your possession, to which you have testified this morning, which you searched for under the subpœna—like Exhibit "28"?

A. I think they are; I have looked for them but could not locate them and there is one or two places I could not get into.

22. To the best of your knowledge are the papers you hold duplicates of Exhibit "28."?

(Objected to as immaterial.)

A. That would be a hard thing for me to say.

1532 23. How many documents similar in purport to Exhibit "28" have you ever received pertaining to the capital stock of complainant company?

(Objected to as incompetent and immaterial.)

A. I handle a good many stock certificates and I could not recall.
24. I am speaking of those.
A. I have had several of them at different times.
25. About how many?

(Objected to same grounds as before.)

A. I don't recall the number.
26. Was it half a dozen or a dozen or more?

Objected to same grounds.

A. It was not that many or I would remember; I should say 2 or 3 maybe.
27. As a matter of fact, didn't you receive just two?

Objected to same grounds.

A. I think I received more than two.
28. Is the stock certificate which you received for your original subscription still in your possession?

Objected to same grounds.

A. I could not say as to that, I don't know.
29. When did you last see it?
A. I don't know as I ever saw it.
30. Do you know whether you ever received one or not?

Objected to same grounds.

A. My impression is I did.
31. Do you know what you did with it?

Objected to same grounds.

A. No sir.
32. Have you no idea?
A. I have an idea and that is why I say I could not find it. I said I looked for it.

1533 33. Before testifying further do you desire more time in which to make a search for the papers called for by the subpœna for the purpose of producing them in court if found?
A. I don't know unless you want them; if I can find them I will bring them into court, I have no objections to that.

(The MASTER:)

34. You will make further search for them, as I understand you, and if you can find them will bring them into court this afternoon?
A. Yes sir but I don't know whether I can get into a safe I want to get into this afternoon; I would have to look in there; I have three or four places where I keep different things.
Mr. TICHENOR: Are those different places all under your control?
Ans. No sir.
35. State whether or not you ever received any stock certificate

for stock in complainant company other than the one on your original subscription, if you received that?

Mr. RITCHER: I think the witness ought to be excused from further search for the document or this inquiry ought not to be pursued further.

The MASTER: I think so, but the witness may answer the pending question?

A. I could not tell unless I found my certificate; I have a recollection of some certificates but what they are or what they are for, I don't know.

36. Will it give you ample time to make your search between now and two o'clock this afternoon?

A. No sir, it would not be possible for me to do so between now and two o'clock; I did not hear of this thing until last night and I want to see my father at his office.

Mr. TICHENOR: I will excuse the witness until 3 o'clock this afternoon in order to give him an opportunity to make a further search for the papers in question.

1534 The MASTER: All right, we will take a recess until 2 o'clock.

Afternoon session, 2 o'clock p. m.

Direct examination of ROBERT D. CLARKE resumed by Mr. Tichenor:

37. Have you now with you the receipt or trust certificate delivered to you in the place of your original stock certificate in complainant company?—I refer now to the certificate issued for your subscription in the original capitalization?

A. No sir.

38. Do you know where it is?

(Objected to as immaterial.)

A. I think I have it in Anthony's but I cannot get into my vault there today.

39. Did you testify this morning that you had received any portion of the increased capitalization of complainant company or a certificate representing any such protion of the increase?

A. I am under the impression that is what this document I have is.

40. Have you with you then the trust certificate or receipt delivered to you in exchange for your original stock certificate covering certain shares of the increase in the additional capitalization of complainant company?

A. I am not familiar enough with that to state.

41. How many different stock certificates in complainant company have you received?

A. I am not positive as to that but since this morning I have found out it was two.

42. And you have one of those certificates or receipts with you?
Ans. Yes sir.

43. Which one was it? For the original or second issue?
A. This is not the first one.

44. Will you produce the receipt to which you refer?
1535 A. I will read it to you or compare it with any of the others; I think the amount and number of shares is private business.

45. So you refuse to disclose that, do you, and refuse to produce the receipt in question for examination?
A. Yes sir.

45. Is it for a greater or less number of shares than were issued to you of the original capitalization as represented by your first stock certificate?

(Objected to as immaterial.)

A. This is greater than my first stock certificate.

46. On what date was the trust certificate concerning which you are testifying delivered to you?

Objected to as immaterial and assuming it is a trust certificate.

A. I could not say as to that.

47. Whose signatures are affixed to the receipt or certificate concerning which you have testified?
A. John R. Walsh and Sumner R. Clarke.

48. Are they their genuine signatures, do you know?
A. I know Sumner R. Clarke's is his genuine signature; I don't know the other signature.

49. For what purpose was that receipt or certificate delivered to you and under what circumstances?

Objected to as incompetent, immaterial, irrelevant and not the best evidence.

A. I don't know.

50. What did you pay for it?

(Objected to same grounds.)

A. I don't think I paid anything for this one.

51. What did you pay for the stock certificate which that receipt purports to represent?

(Objected to same grounds.)

A. I think that would come under the head of the 20% assessment on the original subscription.

52. Do I understand you to say that this certificate or re-
1536 ceipt, concerning which you are now testifying, was given to you in exchange for the 20% assessment you testified you paid?

Objected to as incompetent and immaterial.

A. I don't quite understand the conditions under which this did come.

53. Has anyone, connected with the complainant company, ever given you any explanation of the reason for the issuing of those certificates or receipts like the one you hold in your hand?

Objected to same grounds.

The MASTER: I think it ought to be confined to such information as he may have obtained from the officers of the complainant company.

A. No sir.

54. To whom was that receipt or certificate issued?

Objected to as immaterial.

A. It was issued to R. D. Clarke, myself.

55. State whether or not at the time that was delivered to you you surrendered any certificate of stock in complainant company?

Objected to as immaterial.

A. I could not say as to that.

56. What is your best recollection as to the number of certificates of stock you have ever held in complainant company?

A. I was under the impression I had had 3 or 4, but since then I think I have had only two; on account of not being able to find the other I inquired some.

57. What, if anything, did you have to do with increasing the capital stock of complainant company?

(Objected to same grounds.)

A. Nothing whatever.

58. When, with reference to the time of such increase, did you know it was contemplated or had been done?

Objected to same grounds as before.

A. I don't know it has been done yet.

37 59. Where have you lived and spent your time during the last two years?

(Objected to same grounds.)

A. Here in Peoria most of the time; I have been away part of the time.

60. State whether or not in the body of the receipt, or certificate which you hold, any reference is made to the agreement bearing date December 19, 1900?

Ans. I do not see any, no sir.

61. Read it through and then answer the question please?

A. There is nothing here about Dec. 19, 1900—oh, yes, there is; I didn't see it before.

62. State whether or not you signed that agreement purporting to

bear date December 19, 1900, referred to in that receipt or certificate.

(Objected to as incompetent and immaterial.)

A. I might have signed it but don't remember it now.

63. Do you know that such an agreement was actually executed by anybody?

Ans. I don't know that positively, no sir.

64. Have you any recollection at this time of ever seeing such an agreement.

Ans. I don't recall it; I might have.

65. Does the material contained in that certificate or receipt in any way refresh your recollection about that question?

A. In reading this it looks as though I might have signed it and I ought to have seen it probably, but I don't recall it.

66. Why do you refuse to produce for inspection and examination the receipt or certificate of which you have testified?

A. On account of its being private business.

67. Is that refusal based on legal advice you have received touching the subject matter?

(Objected to as immaterial.)

The MASTER: I think it may become material; the witness may answer.

A. It depends on what I would take as legal advice on it.

68. If you have any further answer to make, make it.

A. I inquired whether it was necessary for me to produce this document.

1538 69. State whether or not those inquiries were made of counsel for complainant in this case?

Mr. RITCHER: I will relieve the witness of any embarrassment. I think I told him, or Mr. Irwin told him if I did not, or we both took the responsibility of saying to him he did not have to show up the number of shares in that certificate, but could show anything else. If he took any other legal advice I don't know it and don't care.

70. When were the statements of counsel for complainant, just incorporated in the record, made to you?

(Objected to as immaterial.)

A. Before I produced this certificate.

71. How long before?

Ans. About 2½ or 3 hours.

72. That was this forenoon then?

Ans. Yes sir;

73. And it was after you were on the witness stand this morning was it not?

Ans. Yes sir;

74. What, if any, dividends have you received from any of the stock in complainant's company issued to you, or any moneys, other than those referred to earlier in your examination?

A. I have never received any dividends whatever.

75. Are you able to testify now any more definitely as to the amount of money you have received on any of those stock certificates than you were during the morning session when you were examined?

Objected to as it does not appear from the testimony of the witness that he received any money on stock certificates.

A. I am not, any more than I think I would recognize a certificate like the other one if I saw it.

76. I am referring to any money which may have been paid you on account of any of those certificates, or on account of any money you may have advanced on them?

(Objected to same ground.)

A. I have not inquired about that.

77. Do you at this time know where either of your stock certificates are?

Ans. Yes, I have one of them here.

539 78. I am speaking of the original stock certificates?

A. No, I don't know anything about those.

79. To whom did you deliver them at the time they went out of your possession?

(Objected to as incompetent, immaterial, irrelevant)

A. I think I gave them to my uncle, C. C. Clarke—I am not positive as to that though.

80. You are referring to both of them now, are you?

A. I don't know about both of them. I don't know enough about to be familiar with one certificate or the other.

81. Do you testify that you have sold or disposed of none of the original issued to you?

A. Not to my knowledge; I might have signed it away without knowing it.

82. You have not sold any of it?

A. Not to my knowledge, still maybe that is why I could not find the other certificate.

Cross interrogatories by Mr. RITCHER:

1. Are you willing to cover up the number of shares mentioned in that certificate and submit it for inspection?

Ans. Yes sir.

FERD LUTHY, recalled on behalf of defendant, deposes and says:

Direct interrogatories by Mr. TICHENOR:

The WITNESS: I would like to make a correction or modification of my former testimony. I think I testified here before that I held some stock in this company, or certificates of stock, but that I had given a voting agreement for the same. Upon further thought I am of the impression that the certificate of stock in my name was cancelled and issued in another party's name for voting purposes which in effect amounts to the same I testified to but there may be a slight difference in the other, that is, the certificate may
1540 not be in my name now but in fact I own the stock but the other fixes the voting privileges more definitely.

1. Does that refer to the stock issued to you of the original capitalization?

A. That refers, as I understand it, to all the stock I have in the company; that is my impression; I am not absolutely certain that was the case but I think it is. In effect it is the same as I testified before.

2. Since you were last upon the witness stand, state whether or not you have succeeded in finding your receipts or certificates for your original stock issued or any part of it?

A. I found my certificate for the first issu- of stock but I did not find the second.

3. Then the explanation you have just made you think bears upon the second issue?

A. I think all my stock is alike in the same situation.

4. What is your recollection as to whether or not you have another receipt than the one you have succeeded in finding?

A. I think I got a second receipt but I have not been able to find it, although I have made quite a diligent search for it; I have papers in various places and I have not been able to get to all the papers. The certificates are, however, practically alike except as to amount and date.

5. And they were both issued, you think, in your name?

A. I think the wording of both, signatures, etc., are alike, and the amount is very nearly the same in both of them.

6. Will you produce the receipt or certificate to which you have referred?

A. I will produce it with the understanding it is handed back to me before I leave the witness stand, as it is my personal property and I do not desire it filed in the case. (Witness pro-
1541 duces receipt.)

7. We will see that the certificate is returned to you. The certificate you have now produced and concerning which you have testified is marked "Exhibit 29" is it?

Ans. Yes sir.

8. Are you able to state the circumstances under which this stock

trust certificate, as it is headed, marked "Exhibit 29" was delivered to you?

Objected to as incompetent, irrelevant, immaterial and not the best evidence.

A. My best recollection at this time is I was asked if I had any objection to giving the voting power of my stock to Sumner R. Clarke and Mr. Walsh as trustees, and I told them I had none, and later on this agreement was executed in accordance with that statement.

9. Do you refer to the agreement referred to in the body of the stock trust certificate, Exhibit "29" purporting to bear date December 19, 1900?

A. It is the memorandum or agreement whereby I consented to let my stock be voted by these parties.

The MASTER: I do not think it competent for you, Mr. Luthy, to state the contents of the agreement. The question is Was the agreement the one referred to in the certificate purporting to be dated December 19, 1900?

A. That is part of the agreement.

10. What do you mean when you say this is only a part of it?

A. This particular paper marked "Exhibit 29" refers to a certain agreement and that agreement—Interrupted.

11. Don't state what it contains but is there anything concerning the arrangement between you and the other stock holders except as expressed in "Exhibit 29" and in the agreement referred to in the body of it purporting to bear date December 19, 1900?

1542 A. None that I know of.

12. State whether or not you signed the agreement referred to in the body of Exhibit "29" purporting to bear date December 19, 1900.

(Objected to as immaterial and irrelevant.)

A. My recollection is that I did.

13. So far as your knowledge extends is that agreement still in full force and effect?

(Objected to same grounds.)

A. I think it is.

14. State whether or not you have actually sold any of the stock subscribed by you originally or any of the second issue?

Objected to as immaterial.

The MASTER: I do not see the materiality of that.

A. I have not.

15. Do you know of your own knowledge where your original stock certificates are—not this trust certificate but your original stock certificates?

(Objected to as immaterial.)

A. It seems to me this agreement clearly states where they are.

16. Do you know of your own personal knowledge?

A. How could I? I don't own the Equitable Trust Co. or their vaults and have not access to them. I have no knowledge as to where they are in particular other than what this agreements states.

17. Have you seen either of those original certificates sincee you surrendered them?

(Objected to as immaterial.)

A. No sir.

18. Do you know who delivered to you Exhibit "29"?

Objected to as immaterial.

A. I think in my previous testim-ny I said I though it waas Mr. Little and Mr. Clarke but I am not positive.

19. And you surrendered your stock certificates at that timee, did you?

(Objected to as immaterial.)

1543 A. My recollection is that I did.

You asked me Mr. Tichenor about the date when the payment was made to me; I have looked up the record and as nearly as I can tell it was about August 30, 1901.

20. That is, when the payment was made back to you, as youu testified?

Ans. Refunded, yes sir.

Defendant's counsel offers in evidence the stock trust certificate identified by the witness marked "Exhibit 29" and asks leave to substitute therefor a duly verified copy of the original foor the record.

Objected to on the same grounds similar documents weree objected to.

The MASTER: It may be admitted subject to the objection.

Whereupon, said certificate was read to the master in words and figures following, to-wit:

1544 EXHIBIT "29." I. C. Pinkney, Master.

Peoria Gas and Electric Company.

Incorporated under the laws of Illinois.

No. 5. 50 shares.

Stock Trust Certificate.

This is to certify that the undersigned have received from Ferd Luthy a certificate or certificates for fifty shares, of one hundred dollars each, of the capital stock of the Peoria Gas and Electric Com-

ay, to be held as provided in the agreement dated December 19, 00, between holders of stock of said company and the undersigned, as managers, and the Equitable Trust Company, which said 45 agreement is deposited with the said The Equitable Trust Company, and pursuant to which agreement this certificate issued, and to all the terms and conditions of which agreement e holder hereof has assented by receiving this certificate. This tificate is not valid unless registered by the Equitable Trust mpany, of Chicago, Illinois, as registrar, and is transferable only the books of the managers on surrender hereof, properly en- rsed by the registered holder.

Dated this fourteenth day of January A. D. 1901.

SUMNER R. CLARKE,
JOHN R. WALSH,
Managers.

(Indorsed on lefthand side.)

Registered this seventeenth day of January 1901.

THE EQUITABLE TRUST COMPANY, *Registrar.*
By L. A. WALTON, *Vice-President.*

Entered

C. HUNTOON,
Transfer Clerk.

(Indorsed on back.)

Know all men by these presents, that —— —— the under- 6 signed, for value received, have bargained, sold, assigned, transferred, and by these presents do bargain, sell, assign and nsfer unto —— —— all the property, right, title and interest resented by the within certificate, subject, however, to all the ns and conditions of the agreement referred to therein, and do eby constitute and appoint —— —— true and lawful attor- , irrevocably, for — and in — name and stead, but to — use ell, assign, transfer and set over all said property, right, title and rest, and for that purpose to make and execute all necessary acts ssignment and transfer, and one or more persons to substitute h like full power, hereby ratifying and confirming all that — l attorney or — substitute or substitutes shall lawfully do by ue hereof.

n witness whereof — have hereunto set — hand— and seal— this day of —— one thousand nine hundred and —.

—— ——. [SEAL.]

igned, sealed and delivered in presence of

—— ——.

1547 BEN. WARREN, JR., recalled on behalf of defendant, deposes and says:

Direct interrogatories by MR. TICHENOR:

1. You are the same gentleman that testified once before in this case, are you not?

Ans. Yes sir.

2. You were served with a subpœna to produce certain papers connected with the inquiry, were you not?

A. I was not served with a subpœna but you asked me if I would come here and bring them and I told you I would.

3. Have you those papers in your possession at the present time and will you produce them?

Ans. Yes sir.

4. Are the papers now shown you marked by the master "Exhibits 30" and "31" the documents to which you have just referred and produced?

Ans. Yes sir.

5. State whether or not you have sold any of the stock subscribed for by you of the original capitalization of complainant company?

(Objected to as incompetent and immaterial.)

THE MASTER: How does that inquiry become material?

MR. TICHENOR: It may become material.

THE MASTER: He may answer subject to the objection.

A. No sir.

6. State whether or not you participated in the proceedings in which the increase in the capital stock of complainant company was authorized?

(Objected to as immaterial and not the best evidence.)

A. I think I did, yes sir.

7. Do you know for what purpose the capital stock was increased?

Objected to as immaterial, incompetent and irrelevant.

A. I should say it was increased for the purpose of buying the electric light plant.

1548 Complainant objects to the answer as immaterial, having nothing to do with the litigation in question, and moves the court to exclude it.

8. Are you able to state from recollection when your company purchased the electric light plant, as you have stated?

Objected to as incompetent, immaterial and irrelevant.

A. No sir.

9. In what manner, if you know, was that purchase agree-

plished? I do not refer to the negotiations but was it by purchasing the stock or was it by a purchase of the tangible property?

Objected to same grounds.

The MASTER: I don't think it material.

Mr. TICHENOR: I think it might become very material if it was a purchase of the tangible property the record will show the transfer.

The MASTER: Assuming that is all true and assuming you follow it up by proof of the fact and the record shows the purchase of the tangible property and the payment of a certain sum how would it become material in this case under the issues?

Mr. TICHENOR: I think it may become material and desire to have the witness answer it, if he can.

The MASTER: He may answer subject to the objection.

A. I don't believe I am competent to answer it.

9. State whether or not at the time Exhibit "30" was issued to you you surrendered your stock representing your original subscription in complainant company?

Ans. I did.

10. To whom did you surrender it?

Objected to as immaterial.

A. I suppose to those trustees named.

11. Is it your recollection those trustees delivered to you 1549 the paper marked "Exhibit 30"?

(Objected to as immaterial.)

A. It was delivered to me in the office of the company here either by the secretary or the manager.

12. On or about the day it bears date, January 14, 1901?

A. I could not answer that question.

13. Is it in the same condition now it was when it was delivered to you?

(Objected to as immaterial.)

A. Yes sir, so far as I know except the exhibit mark.

14. State whether or not any certificate of stock was issued to you representing a portion of the increased capitalization of complainant company?

A. That second certificate calls for that marked "Exhibit 31."

15. State what, if anything, you paid for that second certificate that was issued to you?

Objected to as being a private matter of the witness who is not a party to this proceeding and as immaterial.

A. I don't remember that there was anything paid for it.

16. State whether or not any part or portion of the 20 per cent. assessment which you have testified before you paid on your orig-

inal subscription was ever repaid to you either in the shape of a dividend or otherwise?

(Objected to as incompetent and immaterial.)

A. It was paid to me but not as a dividend I don't think; I never heard of a dividend being declared.

17. Do you remember in what form it was paid to you?

Objected to as immaterial.

A. No I don't think I could answer.

18. Was it in cash or its equivalent?

A. I should say so.

19. Look at "Exhibits 30" and "31" and state whether or not you signed the agreement referred to in the body of them
1550 purporting to bear date December 19, 1900?

(Objected to as immaterial.)

A. I think I did; I don't know of any reason I should not; I cannot remember definitely but, of course, I signed it, at least that is my recollection.

20. State whether or not you signed any other papers in connection with the surrender of your certificate of stock and taking in place of them these trust certificates concerning which you have testified?

(Objected to as incompetent and immaterial.)

A. I could not answer; I might have signed something else and might not; I probably signed everything I was asked to.

21. Have you any recollection at this time as to who presented to you the agreement purporting to bear date December 19, 1900, at the time you signed it, if you did?

Objected to as immaterial.

A. I should say it must have been the secretary of the company or the manager.

22. When, with reference to your receipt of the stock certificate representing a portion of the increased capitalization of complainant company, did you know you were to get such a certificate?

Objected to as immaterial and irrelevant.

A. I suppose I had some suspicion of it about the time the capital stock was increased but I could not give any definite time.

23. State whether or not you ever sold any portion of your stock issued to you of the increased capitalization?

Objected to as immaterial and already asked and answered.

The MASTER: I do not see anything to change my mind as to the materiality of evidence of that character, whether it relates to the original or increased capitalization. I do not think it material.

Mr. TICHENOR: I would like to have the witness answer it.
The MASTER: He may answer subject to the objection.

Those papers represent all the interest I have ever had in the
any in any shape or form and I have not sold anything.

fendant's counsel offers in evidence the documents produced
dentified by the witness marked "Exhibits 30" and "31" and
leave to substitute for the originals duly verified copies for the
d.

jected to on same grounds similar documents have been ob-
l to.

e MASTER: The documents may be admitted subject to the
tion.

hereupon said documents were read to the master in the words
igures following, to-wit:

EXHIBIT "30." I. C. Pinkney, Master.

Peoria Gas and Electric Company.

Incorporated under the laws of Illinois.

. 17. 50 shares.

Stock Trust Certificate.

is is to certify that the undersigned have received from B. Wav-
r., a certificate or certificates for fifty shares, of one hundred
s each, of the capital stock of the Peoria Gas and Electric
any, to be held as provided in the agreement dated December
900, between holders of stock of said company, and the under-
d, as managers, and the Equitable Trust Company, which said
ment is deposited with the said The Equitable Trust Company,
ursuant to which agreement this certificate is issued, and to
e terms and conditions of which agreement the holder hereof
ssented by receiving this certificate. This certificate is not
nless registered by the Equitable Trust Company, of Chicago,
is, as registrar, and is transferable only on the books of the
gers on surrender hereof, properly endorsed by the registered
r.

ed this fourteenth day of January A. D. 1901.

SUMNER R. CLARKE,
JOHN R. WALSH,
Managers.

1553 (Indorsed on lefthand side.)

Registered this seventeenth day of January, 1901.

THE EQUITABLE TRUST COMPANY, *Registrar*,
By L. A. WALTON, *Vice-President*.

Entered:
C. HUNTOON,
Transfer Clerk.

(Indorsed on back.)

Know all men by these presents, that —— —— the undersigned, for value received, have bargained, sold, assigned, transferred, and by these presents do bargain, sell, assign and transfer unto —— —— all the property, right, title and interest represented by the within certificate, subject, however, to all the terms and conditions of the agreement referred to therein, and do hereby constitute and appoint —— —— true and lawful attorney, irrevocably, for — and in — name and stead, but to — use, to sell, assign, transfer and set over all said property, right, title and interest, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that — said attorney or — substitute or substitutes shall lawfully do by virtue hereof.

1554 In witness whereof — have hereunto set — hand- and seal- this — day of —— one thousand nine hundred and —

B. WARREN, JR. [SEAL.]

Signed, sealed and delivered in presence of
—— ——.

EXHIBIT "31." I. C. Pinkney, Master.

Peoria Gas and Electric Company.

Incorporated under the laws of Illinois.

No. 26. 56 shares.

Stock Trust Certificate.

This is to certify that the undersigned have received from B. Warren, Jr. a certificate or certificates for fifty-six shares, of one hundred dollars each, of the capital stock of the Peoria Gas and Electric Company, to be held as provided in the agreement dated December 19, 1900, between holders of stock of said company and the undersigned, as managers, and the Equitable Trust Company, which said agreement is deposited with the said The Equi-

1555 table Trust Company, and pursuant to which agreement this certificate is issued, and to all the terms and conditions of

hich agreement the holder hereof has assented by receiving this rtificate. This certificate is not valid unless registered by the quitable Trust Company, of Chicago, Illinois, as registrar, and is ansferable only on the books of the managers on surrender hereof, roperly endorsed by the registered holder.

Dated this 28th day of August A. D. 1901.

SUMNER R. CLARKE,
JOHN R. WALSH,
Managers.

(Indorsed on lefthand side.)

Registered this 28th day of August 1901.

THE EQUITABLE TRUST COMPANY, *Registrar,*
By L. A. WALTON, *Vice-Pre[illegible]nt.*

Entered:

W. P. KRAFT,
Transfer Clerk.

(Indorsed on back.)

Know all men by these presents, that —— —— the undersigned, for value received, have bargained, sold, assigned, transferred, 56 and by these presents do bargain, sell, assign and transfer unto —— —— all the property, right, title and interest represented by the within certificate, subject, however, to all the terms d conditions of the agreement referred to therein, and do hereby nstitute and appoint —— —— true and lawful attorney, irrevably, for — and in — name and stead, but to, — use, to sell, ign, transfer and set over all said property, right, title, and interand for that purpose to make and execute all necessary acts of ignment and transfer, and one or more persons to substitute with e full power, hereby ratifying and confirming all that — said orney or — substitute or substitutes shall lawfully do by virtue reof.

In witness whereof — have hereunto set — hand- and seal- this day of —— one thousand nine hundred and —.

—— ——. [SEAL.]

Signed, sealed and delivered in presence of

—— ——.

1557 FRANCIS W. LITTLE, recalled on behalf of defendant, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. You are the same Francis W. Little who has heretofore testified in this case as a witness on behalf of the complainant?

A. Yes sir.

2. When did you take up a permanent residence in Peoria?

A. I leased my house about the first of June, 1899, and I spent most of my time in Peoria during the month of May, 1899. In fact, if I remember correctly, I gave up my house in Akron, Ohio, May 1, 1899.

3. Had you spent any considerable time in Peoria prior to May 1, 1899?

A. I had made two or three visits here lasting, I should say, from two days to a week.

4. How long prior to May 1, 1899, were those visits, as nearly as you can remember.

A. I should say from my present recollection that the first one was in February and the others during the latter part of February, March and April, 1899.

5. Did you come to Peoria on those occasions with reference to the proposed organization of the complainant company or with reference to its purposes?

Ans. Yes sir.

6. With what company had you been associated for some years prior to the time you came to Peoria?

A. I was actively engaged with the Akron Gas Company of Akron, Ohio, from the early winter of 1895—I think about November or December, 1895.

7. In what capacity were you associated with that company?

A. As vice president and manager.

8. Were you an active officer of the company and spent
1558 your time with it?

Ans. Yes sir, the greater portion of my time.

9. Were your duties with that company substantially of the same character they have been with the complainant company since you came to Peoria?

Ans. Yes sir.

10. What practical experience had you had prior to your connection with the Akron Gas Company with the gas industries?

A. Well, I had had no practical experience in the sense of operating a plant prior to taking hold of the Akron Gas Company, but was familiar through study and observation with gas and electric plants for a considerable period of years, probably 10 or 12 years, prior to that time.

11. State whether or not, prior to the time you went to Akron, you had had a technical education in the manufacture and distribution of gas?

A. My acquaintance with the gas business was the result of my own study and investigation; I had not attended any technical schools and in that sense was not technically educated.

12. Do you remember how far proceedings relative to the incorporation of the complainant company, or the procuring of a license from the city of Peoria, had progressed when you took up the subject pertaining to the complainant company's affairs in the first instance.

A. My recollection is that the matter had been talked over by Mr. Miller, and possibly Mr. Clarke, before I came here. I think my first visit here was prior to the incorporation of the company and prior to the procuring of frontage consents, but I am not quite clear about that.

13. Who first called your attention to the proposed organization of a new company in Peoria for the purpose of engaging in the gas business?

A. I could not say positively; I think it was either Mr. *Mr.* Miller or Mr. Clarke.

1559 14. Are you able to state from recollection as to whether or not you first met those gentlemen, or either of them, with reference to the business in question, in Peoria or in Chicago?

A. My recollection now is the meeting was in Chicago.

15. Who were present at that meeting, if you remember?

A. As I recall it, I met Mr. Clarke and Mr. Miller at the Grand Pacific hotel and we talked over the matter and then went around to the office of John R. Walsh in the Chicago National Bank building.

16. At that time and during your connection with the Akron Gas Company, Mr. Walsh had owned a controlling interest in the Akron Gas Co., had he not?

A. I don't know of his owning a controlling interest from the fact I never saw the stock book, but I had been under the impression that he did, he and his friends, own a controlling interest.

17. Was there at that time more than one artificial gas plant in Akron?

A. No, not engaged in the general distribution of gas.

18. Do you remember who called you to Chicago at that time?

A. No, I do not. I don't remember whether I was called to Chicago, or whether I came there; I was in the habit of going to Chicago quite frequently and I don't remember now whether I was called, or whether it was a meeting that occurred simply because I happened to be there.

19. For how long a period of time, then, had you been acquainted with Mr. Walsh in a business way or otherwise?

A. I think I first met Mr. Walsh about 1893 or 1894.

20. What was the nature of the discussion between you and the other gentlemen, whose names you have mentioned, at the time you

1560 say you met Mr. Miller and Mr. Clarke in Chicago, so far as the discussion pertained to the organization of a company for the purpose of engaging in the gas business in Peoria?

Objected to as immaterial.

A. As I remember, the discussion was almost wholly on the question as to whether a franchise or license could be secured for a gas and electric plant in Peoria.

21. Did you at that time know the situation with reference to the gas business in Peoria?

Objected to as immaterial and irrelevant.

A. Only in a general way, to the extent that I was familiar with the fact there was a company doing business here and had such facts, relating to the output of the company, as were common public property; I had no special knowledge of it.

22. Had you prior to that time ever been in Peoria for the purpose of looking over the territory with a view of engaging in the gas business or for the purpose of ascertaining its desirability?

(Objected to same grounds.)

A. No sir.

23. Had you ever been in Peoria prior to the time you say you were here perhaps in February, 1899?

Objected to same grounds.

A. Yes sir, I had been here a number of times; I was in Peoria 20 years ago and at various times since then. I think the last previous time I was in Peoria was about 1895.

24. But that trip here had nothing to do with this question at all?

A. Not with regard to the organization of any new company or looking into the field covered by the existing company.

25. Did you on the occasion of this first visit in Chicago know the rates than charged for gas in Peoria?

Objected to as immaterial.

1561 A. I knew what was stated in Brown's Directory as to the rates and it is possible, although I have no recollection, that the matter was discussed at that time.

26. What is this Brown's Directory to which you refer?

A. It is a directory of gas companies giving the most important of the statistics concerning the business of the companies in the various towns of the United States, Canada and Mexico.

27. It is regarded by gas men as authoritative on those subjects?

Ans. In a general way, yes sir.

28. Were any of the gentlemen present at that time in any degree skilled in the gas industries other than yourself?

Objected to as immaterial.

A. I think not; at the first meeting except Mr. Walsh; he has considerable acquaintance with the gas business.

29. Had he at that time *time* ever been actively engaged in the superintendency or management of any gas plant within your knowledge?

Ans. Not that I know of.

30. Were there any other methods, than those which you have already stated, by which you became familiar with gas properties and gas industries prior to the year 1895?

A. I think I stated in my former examination that prior to 1895, for a number of years I had been making more or less of a study of the gas business. As far back as 1885 or 1886, as I remember now, I was engaged in dealing in gas securities, bonds and stocks, and continued in that business for perhaps—certainly until 1891; from 1891 to 1894 or 1895—the winter of 1894–5, I was engaged in the street railroad business which brought me in contact with the electric lighting business and through that with the gas business; so I followed the production, manufacture and general progress of the gas business as well as the street railway business and during
1562 all the time I have mentioned I took advantage of every opportunity I had to visit gas plants, talk with gas people and become familiar with the gas industries.

31. As a part of your business in handling gas securities, did you examine gas plants for the purpose of determining the value of such securities?

A. Yes I did in a number of instances, in all instances where the question of the desirability of the security came up for my personal consideration.

32. In what territory were you operating during that time?

A. Northwestern Iowa, southwestern Minnesota, southeastern Dakota and eastern Nebraska.

33. Was this occasion at Chicago, to which you have referred, the first time at which you and Mr. Clarke had discussed the gas business in Peoria?

A. I think it was the first I have any recollection of. I have known Mr. Clarke for a good many years and it is possible I talked with him about it years ago but I have no recollection *fo* ever having taken it up with him before that.

34. When did you next see any of those gentlemen with reference to this particular subject matter?

A. My recollection is I came to Peoria that same night, or the following night, with Mr. Clarke and Mr. Miller although my trip to Peoria might have been at a subsequent meeting; I do not recall now with reference to that; it was either the first or second time I met them I came down.

35. What was your purpose in coming to Peoria on that occasion?

(Objected to as immaterial.)

The MASTER: If it was connected with the procurement of the franchise from the city, you ought to show that, for if it was not it is not material.

36. Was that business in Peoria with reference to the sub-
1563 ject matter under consideration here?

A. Well, it was more particularly with reference to an examination of the town and to get a general idea of the lay of things here more particularly as to the prosperity of the place, whether it was growing or not; also perhaps to talk a little more fully with Mr. Miller on the question of his ability to get the necessary frontage.

37. Did you make the necessary examination of the town to satisfy yourself as to its advantages with reference to the installing of another gas plant here?

Ans. Yes sir.

38. What was your conclusion in that regard so far as you expressed it to Mr. Miller and Mr. Clarke if you did express it?

Objected to as immaterial.

The MASTER: I don't think that material.

Mr. TICHENOR: I would like to have the witness answer the question.

The MASTER: He may answer:

A. I don't remember that I expressed any conclusion at all, but I was satisfied with the apparent growth and prosperity of the place.

39. What are the particular items necessarily taken into account in determining the desirability of establishing a gas plant in any given city or town?

A. First, the physical condition of the town, its shape and the kind and character of the soil; the location of the town with reference to the surrounding country; the sources upon which its prosperity is based, the general character of the population and the apparent difficulty, or lack of difficulty, in laying mains, and in a general way, if there is a gas company already doing business in the town, its relations to the public and its popularity or non-popularity. Those are the principal things I would consider.

1564 40. What did you find at that time with reference to the available territory in this district already occupied by the gas company then operating here?

(Objected to as immaterial.)

A. I did not make any effort at that time to ascertain where the mains of the other company were located or what territory it would reach; I was interested more in the physical condition and topography of the town, character of the soil, etc., and the general relations of the existing company to its patrons and the manner in which a gas plant could be laid out. I had sufficient information

taken, as I say, from Brown's Directory to satisfy me on the other questions.

41. In what way is the topography of a given locality essential in reaching a conclusion upon the question concerning which you are testifying?

A. Topography often is very important. It is frequently the case that, on account of topography, it is necessary to lay a very large amount of mains to reach a given number of consumers. In other words, if, for illustration, the town is hilly and the centers of the residence population are separated by gulches or ravines, it frequently happens that the number of consumers per mile of main is necessarily small.

42. To what extent were the various elements, which you have testified as entering into a conclusion upon that question favorable in Peoria?

A. I considered the situation favorable here.

43. And did you so report it to the gentlemen then proposing to become interested?

Ans. Yes sir.

44. How long were you here on that occasion investigating the conditions here?

A. My recollection now is my first visit here was for two days.

1565 45. Did you at that time obtain any information as to the character of the plant of the gas company then operating in this territory?

Ans. No sir, I don't think I went near the plant at that time.

46. Did you obtain any information as to the men prominently identified with the old company, or the company then operating here, so far as pertained to their financial responsibility?

A. No, I did not make any investigation of that at all.

47. Did you regard that as an item of any significance with reference to the question under consideration by you?

A. Only relatively; it had some significance, of course, but not very much. I knew all those gentlemen pretty well by reputation and knew what their standing was in the gas business and among gas men.

48. To whom do you now refer?

A. To the people who were in the management of the old gas company.

49. How long prior to the time of this visit to Peoria, when you made some investigation, as you have testified, did you begin to look up statistics with reference to the gas industry here?

A. Well, for more than 6 or 7 years prior to that time.—say from about 1891, I followed very closely the growth and development of the gas industry in all of the leading towns of this middle western country, Peoria among others. I think I became pretty well informed about 1891 or 1892 concerning both the gas and electric business of the central West.

50. What, if anything, did you have to do with laying the plans for the procurement of an ordinance from the city of Peoria granting the complainant company a license to operate in this territory?

A. I don't think I could be said to have had much of any-
1566 thing to do with that; the principal question was whether or not the necessary frontage could be secured and I think that was a question which Mr. Miller determined almost entirely.

51. What, if anything, had you to do with the organization of the company?

A. Nothing more than to possibly suggest something in connection—I will not say that either. I do not think I had anything to do with it, as I remember now.

52. Did you know the amount at which it was to be capitalized prior to the time the organization was perfected?

A. I don't think I did; my recol-ection is that was not determined at the time of any of my visits and I didn't know about that until after the charter had been obtained, but I knew in a general way about how much it would be.

53. State whether or not prior to the time the organization of the company was completed, any steps had been taken by you, in connection with the others proposing to become interested, for the purpose of ascertaining the outlay necessary to install a plant in Peoria of the character which you proposed to install here, or which you were considering?

A. I recollect*ion* I made some figures on that question and stated my own judgment was it would take from $350,000. to $500,000. to put a plant of that kind here.

54. That was a rough estimate, was it?

Ans. Yes sir.

55. When, in the progress of affairs pertaining to your gaining a footing here, was there any determination with reference to the size of the plant which should be installed?

A. Not until some months after the passage of the franchise-ordinance. In fact, the plans were changed from time to time in the progress of the work and there was some changes made while work was progressing.

1567 56. Do you remember from recollection about when the ordinance was passed?

A. My recollection is the ordinance was passed about the first or second week of April, 1899.

57. What, if anything, did you have to do with the preparation of the ordinance as it was submitted to the city council of Peoria?

A. I don't recollect that I had anything to do with it except possibly to read it over and look in a general way at its terms; I don't think I drew it or had any special connection with it, that is, I don't think I assisted in drawing it; I know I did not draw it. I don't recall the exact circumstances now but I think I saw it.

58. At the time the ordinance was presented, had it been deter-

mined that you would be an interested party in the new enterprise in case the franchise was obtained?

A. Yes, I think so; I think I had made a definite plan; that is to say, I think I had settled on coming here in the event the ordinance was passed.

59. With whom, if anyone, did you co-operate or negotiate in reaching a determination to remove to Peoria and become interested with the complainant company in the event an ordinance was procured from the city council?

A. I talked it over with Mr. Clarke, Mr. Miller, Mr. Walsh and Mr. Walton, and I think the agreement was reached with them that in case the ordinance was granted on satisfactory terms and conditions that I would come here and take charge of the installation of the new plant and the operation of it.

60. Those four gentlemen are the same persons whose names have frequently been referred to in the testimony in this case, are they not?

Ans. Yes sir.

1568 61. What if any experience had you had at that time in installing gas plants?

A. I had just shortly before that completed the remodeling and practically the building of a new gas plant in Akron, Ohio; that was done entirely under my supervision.

62. In magnitude how did that plant compare with the one it was proposed to build in Peoria?

A. We had a larger mileage of main in Akron, the purifying capacity was about the same, the generating capacity was a little greater in Akron, the holder capacity was a little greater in Akron.

63. When you speak of a greater mileage of mains in Akron do you refer to what was contemplated in Peoria or to what was actually done?

A. We had more mileage in Akron than we contemplated here.

64. Do you remember at this time about how much frontage was obtained at the time the ordinance was presented to the city council?

A. My recollection is there was a frontage obtained on over 50 miles of streets.

65. Did that cover substantially the territory in which you proposed to operate or was it greater or less?

A. It covered more territory than we proposed to lay mains in during the first year.

66. At the time of the presentation of the ordinance in question had you informed yourself as to the portion of the available territory in Peoria then covered by the Peoria Gas Light & Coke Co.?

A. Only in a very general way; I had not with any particularity.

67. What was the fact in that regard?

1569 A. I think they had mains on most of the principal business streets and residence streets.

68. Had you at that time informed yourself as to the ability of

the company then operating here to furnish a sufficient quantity of gas to meet the demands?

A. No I did not; I did not know what their capacity was.

69. Did you at that time know substantially the gas consumption of Peoria?

A. All I knew about that was that Brown's Directory gave its output at about one hundred million cubic feet per year.

70. For what year was that?

A. That was the directory for 1898.

71. Were you in Peoria during the time the ordinance for that franchise was pending before the city council?

A. I think I arrived here the day it was passed; I do not now recall being here during any of the period from the date of its introduction until the day of its passage.

72. State what if any information you had given the gentlemen proposing to become interested with you in the new enterprise with respect to the profitable character of an investment of that kind here, taking into account all of the conditions?

Objected to as incompetent and immaterial.

A. I did not give any detailed statement as to what might be expected, but said, in a general way, I thought there was room for another company and it would ultimately secure a profitable business.

73. State whether or not it was at that time the intention of yourself and your associates to enter the Peoria territory for the purpose of operating a competing gas plant?

Objected to as immaterial.

A. Yes sir, it was to compete where competition was necessary and to occupy any other territory that was not occupied by the
1570 existing company.

74. What if any assurance had you that your company would be able to control much new territory as might become desirable for distribution of gas?

A. We had no assurance we would control the territory; we would have to take our chances on that.

75. At that time was there, in your judgment, any territory in the Peoria district not occupied by the Peoria Gas Light & Coke Co., in which mains might be extended and gas furnished profitably?

A. Yes sir.

76. Where were those locations, if you remember at this time?

A. At the time the matter was under consideration, as I have stated, I had no knowledge of the particular streets and districts occupied by the mains of the Peoria Gas Light & Coke Co., but understood in a general way the number of miles of mains they had and I felt that a considerably increased mileage could be put in with good profit to a company, and I have since had my views in that respect confirmed by more intimate knowledge of the city.

77. Are you able to refer to any of those localities that were not occupied at that time by the old company?

A. The eighth ward was one, Averyville was another and there are quite a large number of streets in various portions of the city where mains should be laid in my judgment.

78. And since that time have those districts which you have particularly designated been covered by the piping system of your company, or the old company?

A. Not by our company and I think not by the old.

79. At the time you commenced operations in furnishing gas state whether or not your piping system extended into any territory not covered by the Peoria Gas Light & Coke Co.

A. In a general way, our piping system competes with that
1571 of the Peoria Gas Light & Coke Co. but there were streets here and there which were reached by us only.

80. Was that item of any considerable magnitude or only small?

A. Relatively small.

81. How many miles of mains had your company at the time it began to serve gas?

A. In round figures, 25 miles; I think I have given the exact figures in my former testimony.

82. Are you able to state about how many service pipes you had put in prior to the time you commenced to serve gas?

A. I could not give you that from memory; I testified on that, I think, in my former testimony and I can refer to our records and give you the information.

83. State whether or not you know what portion of the consumers served by your company at the time you began, were also connected with the piping system of the Peoria Gas Light & Coke Co.?

A. I can only give you a very rough estimate of that; I don't think we have any records which would show that; I would say that probably 40 to 50% of our customers when we commenced were not gas takers previously.

84. Were those in the business districts and residence districts also?

Ans. Yes sir.

85. Was there any man of your company at that time who had exclusive charge of the setting of meters?

A. The meter setting was done under the general charge of John Robb, superintendent of distribution; he employed different men in setting meters and I think you could say that was in his charge.

86. Was no record kept by him or others of the meters with reference to whether or not the customers who had meters put in were previously taking from the old company?

A. I don't think.

1572 A. I don't think there is, we have an inspector's report which shows whether or not the house was piped, what they were using gas for, if at all, if they were not using gas what they were using for both light and fuel, but whether it shows that at the

time of this inspection they were taking gas from the other company I am inclined to think not.

87. When was that inspection made with reference to the time you began to furnish gas?

A. That inspection was made upon the turning into the office of the application for the service; before the service was laid an inspector was sent there to examine the premises.

88. Then the material concerning which you have been testifying as coming from the inspectors was gathered from time to time prior to your commencing to furnish gas as the applications for service were made.

A. Prior and subsequent, both: it was one of the routine performances of the office.

89. And have those records been preserved?

Ans. I think so.

90. If this inspection record was kept in the manner in which you think it was, it would show, would it not, the situation in respect to service by the old company?

A. I think it would show, as I say, whether the house was piped, whether they were using gas for any purpose, and whether they had used gas at any previous time. We found quite a good many houses where the people had at some previous time been using gas and had discontinued it; this was kept in the form of a card index record and those cards, I think, contained that information.

91. In those instances, where the service pipes of the Peoria Gas Light & Coke Co. were all in, would the addition of the service pipe from your company increase the efficiency of the service of gas, or give the consumer any conveniences or accommodations not
1573 supplied by the old company, assuming the price to be the same.

A. In a great many cases it would for the reason that many of the service pipes which had been put in by the old company were too small to permit of using a gas stove or instantaneous water heater, being intended only to supply gas for light where the quantity burned per hour is small.

92. Do you know how long those small pipes had been there?

A. No.

93. At that time, how long had gas been used more or less generally for fuel purposes?

A. It came in gradually; I think perhaps for 1888 to 1892 was when people began to use gas for fuel purposes in what you might call a general manner; I say that generally, I do not know that this applies to the city of Peoria; I don't know when they attempted to promote the fuel gas business in Peoria.

95. Did you have any personal knowledge of any services belonging to the Peoria Gas Light & Coke Co. that were too small for furnishing gas for fuel purposes?

A. Not to the extent that I had made any measurement of the

services or examined them; my knowledge came through the reports which came into the office.

96. And were those the same reports to which you have already referred?

A. Not necessarily; the solicitors and superintendent frequently made verbal reports on those subjects and a number of people came into the office and stated they had received notice from the old company to put in new services and wanted to see us about it because their present services were too small; that was the source of my personal information.

97. It was all a matter of hearsay and not based on any certain knowledge you yourself had?

1574 A. I had not examined the services at all.

98. Did you personally know how long the Peoria Gas Light & Coke Co. had been furnishing gas for fuel purposes and what efforts it had made in the way of its introduction generally in Peoria?

A. No, I had no personal knowledge about it.

99. Did the statistics, to which you have referred, divide the gas used for illuminating purposes from that used for fuel purposes or was it in a gross item?

A. No, it stated only there was so many thousand cubic feet and such a per cent. of gas was used for fuel purposes.

100. When you first began to operate in Peoria territory, is it not true there were a very large number of gas stoves, ranges and heaters in use here?

A. Well, that depends on what you call a large number; there was not quite as many as, in my judgment, were necessary or could have been gotten into use through the efforts of a properly managed gas company.

101. Didn't you ascertain about that time, or have you not ascertained since, that approximately one half of the entire gas consumption in Peoria was for fuel purposes?

A. No, I don't think at that time it was anywhere near one half.

102. You have no certain knowledge of that?

A. No, but judging from our own business and from what I have seen of the business here, I should say there was not over one third of the gas used for fuel purposes.

103. It is a fact, is it not, and one which you knew at that time that gas was used to a considerable extent in Peoria for fuel purposes?

Ans. Yes sir.

104. And is it not true that is one thing which you took
1575 into account in considering the advisability of Peoria as a location for a competing gas company?

A. I took into account the fact that there was not as much gas sold here for either fuel or light as I thought could be sold or ought to be sold.

105. But the fact that gas had been introduced here for fuel purposes was one consideration which you took into account?

A. Yes sir, it had gained a foothold, although I would rather have had a virgin field.

106. Is it not a fact that the growth of the gas business for fuel purposes had been comparatively slow. I am speaking now of the time when it was first introduced.

A. Well, it has in a sense that gas has been used as a heating agent for 75 years but since it began to be introduced for fuel purposes its gro-th has been very rapid.

107. Did you at that time know the price that the old company was charging for gas used for fuel purposes?

A. Yes, approximately.

108. And did you also know the price being charged for gas for illuminating purposes?

A. Yes, I knew the net price. In fact, I knew the net and gross prices.

109. And was there a net and gross price on each of the different kinds of gas furnished by the old company?

A. That is my recollection although I am not entirely clear about it.

110. What was the price then charged for fuel gas?

A. My recollection is it was 85 cents gross and 75 cents net per thousand feet measured through a separate meter used in a full sized range. In other words, I don't think they made those prices for hot plates or little small burners.

1576 111. Did you understand at that time there were different prices on gas served for fuel consumption?

A. Yes sir.

112. From what source did you derive that information?

A. I could not tell you now; I remember it was in the directory and I made have talked to Mr. Clarke or Mr. Miller; I have forgotten how I got the definite information.

113. Did you know at that time how long the Peoria Gas Light & Coke Co. had been serving fuel gas on the basis of 75 cents per thousand cubic feet?

A. No, I did not know how long, but I knew they had been doing it for a number of years.

114. Do you remember at this time at what price illuminating gas was sold when you first came to Peoria for the purpose of investigating the advisability of the location of a competing plant here?

A. I think the gross price was $1.35 and the net price $1.25 per thousand cubic feet.

-15. Did you know of any change made in either of those prices prior to the time the city council granted to your company a license *ot* use the streets and alleys of the city for the purpose of constructing your piping system and to install the plant generally?

A. Yes, I think while the ordinance was pending I was sent a

newspaper clipping showing that illuminating gas was lowered to $1.00. In other words, a price of $1.00 net was in force during the time the ordinance was being considered.

-16. Do you know whether or not the old gas company ever did enforce a dollare rate for fuel gas based upon that advance to which you have referred?

A. Whether they collected a dollar rate?

117. Yes.

1577 Ans. I don't know anything about that; all I know is the newspaper clipping I spoke of.

118. Did you become a gas consumer immediately after you came to Peoria?

A. I think I did in June.

119. Was that for both lighting and fuel purposes?

Ans. Yes.

120. What did you pay?

A. I could not tell you now without reference to the bills; I think I paid $1.00 for light and 75 cents for fuel.

121. State whether or not during the pendency of your ordinance or prior thereto, the old gas company did not state that if a competing gas company came into the territory it would put the price of gas for all purposes at 50 cents a thousand and keep it there for at least 5 years?

A. I don't know of any public statements of that sort but my recollection is Mr. Miller told me Mr. Coffey had stated that to him.

122. Do you remember how far your plans had advanced at the time you received that information?

A. I think that statement was made before I was connected with the company officially. In fact, before the ordinance was passed.

123. What if any effect had that upon the plans with reference to building a competing plant in Peoria?

A. We thought that was guff—it did not have any effect.

124. At what price was the old company furnishing gas when you began to furnish it?

A. $1.00 for light, I think, and 75 cents for fuel was the price.

125. How long did those prices continue on the part of the old company with reference to the time you began to furnish gas?

A. I think only a few days; I don't remember exactly how long.

126. What change in the prices was then made?

1578 A. I think they reduced the price to 50 cents.

127. What price did your company charge during the same time for gas?

A. The first consumer we took on, or when we commenced to sell gas, we sold it at 90 cents for light and 65 cents for fuel, which rate was cut almost immediately to 40 cents for all purposes and 10 cents off for prompt payment, making it a 30 cent rate.

128. Who fixed the original rate for your company, as you have testified?

Ans. I did.

129. State whether or not during all the time you have been connected with the complainant company, you have had the authority to make rates?

A. Yes, I have made all the rates that have been made.

130. Has there at any time since you became associated with the company been any other person interested in it having a knowledge of the cost of manufacture and of the details of the gas business?

A. The treasurer has known more about the cost of manufacture even than I did and the officers of the company.

131. I am speaking of the cost of the manufacture of gas generally—not of the cost here?

A. I think Mr. Walton and Mr. Walsh know that fairly well; they have had investments of that sort and been connected with the financial side; I don't think they have ever had anything to do with the operating side of a gas plant.

132. State whether or not people handling the business part of gas industries, as you say Mr. Walton and Mr. Walsh were, could acquire a reasonable definite and accurate knowledge pertaining to the cost of gas production and distribution and the profits connected with it?

Objected to as incompetent, irrelevant and an attempt to
1579 qualify somebody else besides the witness.

The MASTER: The principal objection to that question is, it calls for the rankest kind of a conclusion; the witness might state that they know and it might be they could acquire no knowledge whatever; I think the question highly objectionable.

Mr. TICHENOR: I would like to have the witness answer it.

The MASTER: He may answer subject to the objection.

A. If they gave the matter study and attention enough I do not see why they could not.

132. At the time you arranged for the capacity of your operating plant what plans were adopted with reference to supplying the whole or only a portion of the available Peoria district?

A. That was not considered in that way; the plant was based upon the possible output of a certain amount of gas, but just where that gas was to be sold was not determined; we did not take any particular locality and say we were going to sell gas there; we were going to sell it where we could.

133. State whether or not you built with reference to a capacity sufficient to supply the whole of the Peoria territory?

A. No, we did not.

134. Were there certain portions of your plant which were sufficiently large for those purposes?

A. No, I don't think there was any portion of it built large enough to supply the entire business; it was all proportioned about alike.

135. On what basis with reference to the proportion of gas consumption in Peoria did you construct if as a matter of fact you did

make your establishment upon any certain percentage of the gas output in Peoria?

A. Well, I will tell you the facts and then you can see how closely it answers your question. The plant is designed to supply
1580 about one hundred to one hundred and twenty-five million feet of gas per year; it is also arranged so it can be increased, doubled up in fact if we get business enough to require a larger plant.

136. What portions of your plant must necessarily be increased in order to enable you to double the quantity of output for which it was originally designed?

A. We would have to put in additional retorts or a water gas set, as the case might be, that would depend upon which was the better thing to do at the time. We would have to increase the condensing, washing and scrubbing capacity and increase the purifying capacity and put in another storage holder.

137. And as I understand you your plant as originally constructed was arranged with reference to those additions if they should be required?

Ans. Yes sir.

Adjourned until Friday, May 9, 1902, at 10 a. m.

United States court room, Government building.

PEORIA, ILL., FRIDAY, *May* 9, 1902, 10 o'clock a. m.

Present: Judge I. C. Pinkney, special commissioner Mr. W. T. Irwin, Mr. E. C. Ritcher and Mr. W. T. Abbott appearing for complainant. Mr. Henry Mansfield and Mr. F. H. Tichenor appearing for defendant.

Direct examination of F. W. LITTLE resumed by Mr. Tichenor:

138. What, if any, additions of the character to which you have referred have been made up to the present time?

A. I think nothing has been added.

139. There was one question I omitted to ask you yesterday regarding the distribution system at Akron, Ohio. What was the annual output at Akron, Ohio, when you were there as compared with the annual output in Peoria at the present time?

1581 Objected to as immaterial.

The MASTER: When you speak of output do you refer to the station meter output?

Mr. TICHENOR: I use the term in the same sense the witness has used it when on the stand before. I do it in order there may be no confusion of terms.

The MASTER: The station meter registers the output necessarily does it, Mr. Little?

The WITNESS: Not necessarily; the station meter registers the amount of gas made, and the amount of gas in the holders is figured up each day, generally twice a day, and the amount registered by the station meter is added to or deducted according to the increase or decrease of the amount in the holders.

140. I want to ascertain whether or not the station meter indicates all the gas that is made that passes into the holders?
A. Yes sir.

(Mr. TICHENOR:)

141. (Int. 139 repeated to witness.)
A. The output in Akron was increasing rapidly when I was there; my recollection is, the last year I was there it was something in excess of the amount of gas sent out by the Peoria Gas & Electric Company in any year since I have been here.
142. You don't know then how the output for the last year you were in Akron compares with the entire output in the Peoria district for any year since you have been here?

Objected to as immaterial.

A. I don't know the exact output for any year in the Peoria district, but I should say that the Akron output for the last year I was in Akron was somewhere between forty per cent. and one-third of the total amount of gas sent out in Peoria.
143. What was the population in the Akron district reached by your company during the last year you were manager there?

1582 Objected to as immaterial and irrelevant.

A. I should say somewhere about 33,000 to 35,000, that is to say, that population was probably not reached by the mains of the company but was approximately the population of the district in any portion of which the mains were laid. In other words, the municipal limits of Akron, included a considerable territory, which was not reached by the company's mains on account of the scattered nature of the population and the mains, in one or two instances, go outside of the city limits, so I should say a fair estimate of the population of the district into which the mains penetrate was about 33,000 to 35,000.
144. From an answer given by you yesterday I understood that different towns of substantially the same size consume different quantities of gas. Have you any knowledge from which you can answer as to the percentage of variation between the maximum and minimum of gas consumed?
A. I have in mind one town where I examined the gas works where the consumption was only about 600 feet *per capita* of population per annum. I know of other places where the consumption reaches 3,600 feet *per capita* per annum and it is not uncommon in

English towns to find a consumption as high as 5,000 feet *per capita* per annum.

145. In the main, upon what do those variations depend?

A. Upon the prices of other fuel, the nature of the employment of the people, the conditions of climate with reference to a great deal of sunlight, or a great deal of rain, and with reference to a great deal of heat or cold, hot summers or cold summers and the length of time that a gas works has been established and intelligently and carefully managed.

146. Is the gas consumption greater or less in proportion to the length of time the people have been supplied with gas as a rule?

1583 A. Generally in proportion to the length of time the people have been supplied with gas, if the other factors of the problem are present.

147. State whether or not the gas consumption in the Peoria district *per capita* is large or small?

A. In my opinion now it is a little above the average.

148. How long has that condition obtained?

A. During the past two years.

(The MASTER:)

149. Is this *per capita* consumption based upon the population within the territory covered by the mains of the gas company or is it based upon the population of the entire city?

A. It is generally figured on the population of the entire city because such statistics are rarely available to enable an investigator to know just what districts are covered by the mains.

(Mr. TICHENOR:)

150. Are you able to state about what per centage of increase *per capita* there has been in gas consumption in the Peoria district within the time designated by you?

A. Not accurately. A very considerable increase occurred during the time the gas was being sold at a low price. I should say that during that time the gas consumption increased probably 25 or 30 per cent.

151. What has been the result with reference to a permanent increase in the consumption?

A. There has been considerable permanent increase but the exact amount I am not able to state. I could state it as to the Peoria Gas & Electric Company by making some figures from the books of the company.

152. Does the price at which gas is sold as a general rule affect the quantity of consumption?

A. Yes, necessarily so.

153. In what direction?

1584 A. Generally as the price decreases the consumption increases.

154. Among the factors, mentioned by you as affecting the quantity of gas consumption, which enters the most prominently into the question if any?

A. In my opinion the most important factor is the question of the management of the company and the relations of the company to its customers. In other words, it is like any other retail business; the amount of your sales depend very much more upon the comfortable and pleasant relations between the company and its customers and the treatment which they get at the office of the company and the manner in which complaints are looked after and attended to and the wants of the customers looked after.

155. Are those features of more importance than the price at which the gas is sold?

A. Within reasonable limits, I think they are; of course, if the price was absurd or excessive it would be very difficult to maintain those relations; the price must be a decent one in order to maintain a pleasant and comfortable relation between the consumers and the company.

156. In your judgment which one of those factors were most important in the heavy advance in gas consumption during the period covered by the low price to which you have referred?

A. I think the two factors which were important during that period was the excessively low price and the aggressive manner in which the business was sought.

157. Do you know what proportion of the gas consumed in Peoria your company furnished during that period?

A. No. We commenced with nothing and increased quite rapidly during those few months, but what proportion that was I do not know but I should say in my judgment at the end of say four months we were selling about one-third of the gas sold in Peoria.

1585 158. Does that answer have reference also to the proportion sold by your company during the four months ending August 31, 1900?

A. Yes sir, at the end of the four months' period.

159. I am speaking of the four months ending with August 31, 1900, taken as a whole.

Ans. I don't know about that.

160. My recollection is you have already testified that during that period you sold substantially fifteen million cubic feet. Is that correct?

A. The record will show; I am rather under the impression it was about 18 million; I guess 15 million was the amount sold and 18 million was the amount manufactured.

161. Does the nationality of the population in any manner affect the quantity of gas consumption as a rule?

A. It does to the extent that nationality affects the habits of the people.

162. Then indirectly that is an important factor, is it?

A. Yes sir.

163. At the time you and your associates were considering the advisability of establishing a competing gas plant in Peoria, were you informed as to the status of the various elements affecting gas consumption here as you have already testified?

A. In a general way, yes sir.

164. I understood you to testify yesterday that during the period covered by your connection with complainant company you had had authority to fix gas rates. State whether or not during all that time you have personally fixed those rates.

Ans. Yes sir.

165. State whether or not at any time when rates have been changed the same has been done wholly upon your own responsibility, or as a result of conferences with other officers of the company, or with stockholders, or with both?

Objected to as immaterial unless it refers only to officers.

1586 A. The fixing of the rate and the judgment exercised was generally my own; I usually discussed the matter with some of the people identified with the company to the extent of saying that I proposed to do so and so and asked what if any objections there were to it?

166. Does that answer include the Chicago people interested as well as those in Peoria?

A. Yes sir. That is to say, I don't know that I have talked with Mr. Walsh about it; I talked with Mr. Walton usually.

167. Has there been any instance, since your connection with the company, where your judgment in regard to fixing rates has not controlled?

A. I cannot quite answer that; I do not quite see what you refer to.

168. I mean this. Has there been any instance in which the judgment of others associated with you has controlled your judgment as to the fixing of prices?

A. The judgment I may have had when the question first came up with reference to any and every change of price might have been different from that which was finally adopted; those things were talked over but there has never been any case where I felt any final opposition or entered any objection to the final price that was determined upon.

169. Has at any time the matter of fixing rates been a subject under discussion by your board of directors?

A. No, I think not; I do not think there was a case where the question of rates came before the board.

170. State whether or not there was a change in prices charged for gas by your company made on or about the 31st day of July 1900?

Objected to as immaterial.

A. Yes, I think that was the time.

1587 171. What was the rate charged by your company for gas for all purposes prior to July 31st, 1900?

A. Forty cents per thousand feet, with ten cents discount if paid on or befor the tenth of the month was our ruling rate.

172. Was that the same price charged by the Peoria Gas Light & Coke Company at that time?

A. I don't know about that, I have forgotten.

173. Did you know at that time?

A. I knew in a general way; I knew what their public rates were.

174. During the period covered by the time between the last of March 1900 and July 31, 1900, how did the published rates of the Peoria Gas Light & Coke Company compare with your own?

A. My recollection is they offered the fifty cent rate on contract.

175. On a contract for how long a period of time?

A. I don't know; I think, as I remember now, they had contracts of one and two years.

176. Is it not also true they had contracts for a period of five years on the same basis?

A. I have heard they did but I have never seen one of them, and I have been told by our solicitors they have never been able to find one of them.

177. Was there any considerable portion of your consumers during that period who were also taking gas from the other company?

A. There were some but I don't know what proportion.

178. At the time you began to furnish gas is it true that your mains and services extended through the most densely populated portions of Peoria both as to business and residence?

A. Not the most densely populated but we were in what we considered to be the best gas consuming territory.

1588 179. When, with reference to the time you began to furnish gas, did you also commence the introduction of gas stoves and other facilities for gas consumption for fuel purposes?

A. As soon as we were ready to supply gas.

180. At that time as I understand your testimony you were furnishing gas for fuel purposes and for illuminating purposes through different meters?

A. Yes sir, from the very beginning.

181. And that is the same way in which the other company was serving at the same time?

Ans. Yes sir.

182. And that continued up to at least July 31, 1900?

A. No, they did not; that only lasted a few days.

183. Are you speaking now of your own company?

A. I am speaking of our own company and I think of the other company; that is the information I had as coming from our soliciting department.

184. What change did you make, if any, with reference to the method of serving?

A. When the price was put at 40 cents gross and 30 cents net we only set one meter and they substantially met our price; on ordinary consumers who had not signed any contract they made the same rates we did.

185. Did you make any change in such meters as had already been set by your company?

A. Yes sir, we took out the extra meter wherever it had been set so as to use it somewhere else.

186. Do you remember at this time what change was made in rates by your company on or about July 31, 1906?

A. We made a gross rate of $1.25 for light and 85 cents for fuel with 10 cents per thousand off if paid on or before the tenth day of the month following that in which the gas was used.

1589 187. Do you know what change was made by the old company at or about the same time?

A. I think they made the same rates.

188. State whether or not those rates were published by both companies?

Ans. I think so.

189. Who made the publication so far as your company was concerned?

A. I attended to seeing that the typewritten notice was sent to the various newspaper offices.

190. That increase in rates was published in all the Peoria papers, was it not?

A. That is my recollection.

191. What were the circumstances leading up to the change to which you have referred?

A. So far as we were concerned we had made up our minds we were losing money and had lost all we thought was necessary and concluded to put the price where it was profitable again.

192. State whether or not in making that advance in rates you consulted other officers of the complainant company?

Objected to as having already been gone into fully.

The MASTER: Counsel is asking about one year only now; the witness may answer.

A. Yes, I talked the matter over I think with all the officers of the company.

193. Did you also consider the subject with anybody other than the officers of your company?

A. Only with the stockholders of the company.

194. State whether or not prior to the time you advanced your rates you knew that the Peoria Gas Light & Coke Company intended to make exactly the same advance at the same time?

Objected to as incompetent and immaterial.

1590 A. I knew they intended to make some advance.

195. Did you know what that advance was to be?

Objected to same grounds.

A. Not definitely.

196. Through what channel did that advice reach you?

Objected to same grounds.

A. My recollection now is it came to me directly through Mr. Walton; I had talked the matter over with him and, if I remember rightly, with Mr. Clarke and Mr. Miller and the conclusion as to our price was fixed at that time and there was an understanding that the Peoria Gas Light & Coke Company would increase its rates.

197. And to the same point to which you were increasing yours?

Objected to same grounds.

A. I didn't know definitely as to that.

198. What interest had Mr. Walton in the Peoria Gas Light & Coke Company at that time if you know?

Objected to as incompetent and immaterial.

A. So far as I know he had none.

199. Did you see the published notice of the advance in rates made on a card of the old company at or about July 31, 1900?

A. I think so.

200. When did you for the first time see any notice of that character?

A. When it was published in the newspaper was the first time I had any knowledge of it.

201. How did those rate as published compare with your rates as published for the advance?

Objected to as immaterial and not the best evidence.

A. I think they made the same rate.

202. Did you know at that time how it happened that they
1591 hit upon exactly the same rates, both for fuel and illuminating gas, that your company did?

Objected to as immaterial and calling for a conclusion.

A. No, I don't know how they happened to hit upon exactly the same thing; I have no recollection of any knowledge on that score.

203. What, if any, conferences were there between the officers of your company and the officers of the old company, or any representatives of the two companies, with reference to the advance in rates made on or about July 31, 1900?

Objected to as incompetent and immaterial.

A. We had a conference in Chicago. I was in Chicago and had a talk in the office of either the Chicago national bank or Equitable Trust Company—I think it was in the Chicago national bank if I remember correctly. I went over there to talk with Mr. Walsh and Mr. Walton. I think Mr. McKinley was there——

204. (Interrupting.) Who was this Mr. McKinley to whom you refer?

A. He is president of the Peoria Gas Light & Coke Company.

205. Was he at that time?

A. I think so, yes sir. The general question of rates was talked over at the time but there was no conclusion reached at that meeting as to the question of rate.

206. Was there at a subsequent meeting?

Objected to same grounds as before.

A. No sir, not at any meeting at which Mr. McKinley was present. As I remember now that meeting was in the forenoon somewhere between eleven and twelve o'clock and the conclusion of our company was not reached until just before I went home in the evening.

207. Did you see Mr. McKinley again that day?

Ans. No sir.

208. Is that the only conversation you had with Mr. Mc-
1592 Kinley upon the subject of those rates?

Ans. Yes sir.

209. What, if any, representation did he then make to you with reference to the proposed advance in rates upon the part of his company?

(Objected to as incompetent and immaterial.)

A. The statement was made when I came in that the time had about come to stop carrying on an unprofitable business and the question arose as to what wer- fair and equitable rates, what we thought ought to be charged and the discussion was entirely on those lines.

210. What, if any, experience had Mr. McKinley had in the operation of gas plants prior to the time he became interested in the Peoria company if you know?

Objected to as incompetent and immaterial.

A. I know he has been identified with a number of gas plants for several years; I don't know what the sum of his experience is.

211. Who suggested the rate that was adopted by your company—did you or Mr. McKinley?

A. I don't remember about that; the general talk was on the advisability of making two rates and I don't remember who made the suggestion of the rates which were adopted.

212. Look at page 8 of defendant's answers on file in this case at what purports to be copies of the advertisement of those advances in rates on the part of both companies and state whether or not you recognize them as being copies of the published notice of such advance?

A. I think these are copies of the notices as I remember them.

213. Is it not true that the notices of advance in rates concerning

which you have testified and copies of which you have now identified were published in the same papers on exactly the same date?

Ans. I think that is so.

214. Do you know how it occurred that the language em-
1593 ployed in the two advertisements was identical?

Objected to as incompetent and immaterial.

A. No, I do not.

215. Did you see the notices which were published by the Peoria Gas Light & Coke Company pertaining to such advance in rate prior to the time they went into the papers?

Objected to same grounds.

A. No, I did not; I have no recollection of it.

216. Is it not a fact that one messenger was sent from your office with those notices to each and all of the Peoria papers for publication shortly before they were published?

Objected to same grounds.

A. I think not. I have a very clear recollection that I sent no messenger from our office, or any messenger with notices signed by the Peoria Gas Light & Coke Company.

217. State whether or not immediately following the publication of those notices the rates were advanced by both companies in conformity with the statements therein contained?

Objected to as calling for a conclusion and immaterial.

A. I know our rates were maintained at that point; I don't know anything about the other rates, whether they were or not but have no reason to believe they were not.

218. Were you still operating in exactly the same territory covered by the Peoria Gas Light & Coke Company?

A. Not in all their territory.

219. But so far as your territory extended?

A. With the exception I stated yesterday that we reached certain districts where their mains were not laid.

220. But those districts I understand you to say were comparatively small?

A. Comparatively unimportant, yes sir.

1594 221. State whether or not, prior to the publication of those notices pertaining to advancement of rates, there was any understanding between your company and the Peoria Gas Light & Coke Company as to the territory in which each should operate?

Objected to as incompetent and immaterial.

222. What, if any, understanding or agreement was there with reference to the consumers which should be furnished by each?

Objected to same grounds.

A. There was no understanding I know anything of.

223. State whether or not since on or about July 31, 1900, there has ever been any competitive rates between your company and the Peoria Gas Light & Coke Company within your knowledge?

Objected to as incompetent and immaterial and calling for a conclusion.

A. We have maintained our rates steadily.

224. And your rates have always been the same as their rates, have they not?

A. No, I think not, at least, so far as the published rate is concerned; for a considerable period of time until the conclusion of what is known as the Journal suit we maintained a rate of $1.15 for light net and 75 cents net for fuel; about the time of the institution of the Journal suit, or shortly afterward, the Peoria Gas Light & Coke Company made a rate of $1.00 for both fuel and light and our rates varied to that extent for a number of months.

225. Did you make any change in rates subsequent to that Journal suit?

Ans. Yes sir.

226. When was that change made with reference to the change to which you have referred on the part of the old company?

A. Some months after they made their change.

227. For how many months did you continue to serve gas at $1.15 for light and 75 cents for fuel after the old company changed
1595 to a dollar for each?

A. I could not tell you exactly the number of months without referring to the office records but I should say it was four or five months or perhaps nearer a year.

228. State whether or not there was an understanding between your company and the Peoria Gas Light & Coke Company with reference to that particular question.

Objected to as incompetent and immaterial.

A. No, not that I know of.

229. Is it not true that based upon that difference of rates there was an understanding between your company and the Peoria Gas Light & Coke Company as to the territory which each of you should supply and that neither should encroach upon the rights of the other in that respect?

Objected to as incompetent and immaterial.

A. No sir, that is not true; as a matter of fact during the time those rates were in force a good many of their customers came to us and got their gas for fuel purposes and left us and took their gas for lighting purposes from them.

230. And you still continued to maintain the same rates?

A. Yes sir.

231. What were the circumstances under which you changed your price to a dollar for each?

A. When the decision was rendered in the Journal suit we talked it over, consulted our attorneys about it and was advised that the safest thing for us to do was to make a change in the rates and put the rates at $1.00 all around.

232. Since that time it has been the same on the part of both companies, has it?

Ans. I think so.

233. With the exceptions you have noted has there been any difference in the rates between your company and the Peoria
1596 Gas Light & Coke Company since July 31, 1900?

Objected to same grounds.

A. There has been no difference in the published rates; I don't know anything about the rates they have actually made.

234. State whether or not during any portion of the time elapsing since July 31, 1900, you have been furnishing gas to any person or corporation at prices other than those which you have published, or the regular public rate?

Objected to same grounds.

A. We have not so far as I know and I think I know all the cases. I want to make three exceptions, however, to that; we furnished gas to the court house and the post office on contract; we had two contracts with the post office and the court house and we had given a rebate to the cottage hospital.

235. When was the contract made with the county of Peoria with reference to lighting the court house?

A. My recollection is it was made in the summer of 1900, either in June or July, and ran for one year at 25 cents a thousand cubic feet.

236. What have you to say with reference to the other contract?

A. The other contract was with the post office and Government building in which we are now sitting; my recollection is it was for the fiscal year beginning July 1, 1900, at the rate of 25 cents per thousand.

237. Did you carry out both those contracts?

A. No, we did not carry them out.

238. For how long a period of time did you furnish gas at those prices?

A. I could not tell without reference to the books of the company; I think it was only two, three or four months.

239. What was the reason that the whole contract was not
1597 carried out?

A. Because our attorneys advised us we could not discriminate that way.

240. Is it not true that you have, during a portion of the time

elapsing since July 31, 1900, been furnishing gas to private consumers on contract at less than your regular published rate?

A. No sir, we have no contracts with private customers.

241. Do you know whether or not any such contracts are in force in Peoria and are being recognized by your company?

A. No I don't know of any contracts of that sort.

242. Is it not true that during the early history of your company you did make contracts of that character?

A. No, we only made two contracts, the ones to which I have referred.

243. Do you know to what extent the Peoria Gas Light & Coke Company made contracts upon the basis to which you have already testified on terms of one, two or five years?

Objected to as incompetent, immaterial and hearsay.

A. No, I do not.

244. What elements controlled in fixing the prices at $1.25 gross for light and 85 cents gross for fuel at the time you advanced the rates on or about July 31, 1900?

A. We fixed those prices at what we thought we could afford to sell gas at. That is to say, we put the prices—in the first place I want to say in explanation of that, that my own feeling has been from the standpoint of manager of the company that under the conditions prevailing in Peoria it was better for both the public and the gas company to have two prices, one for light, the other for fuel, and the prices which were fixed were fixed with the idea that they were as reasonable as the company could afford to make and were low prices from the standpoint of the public.

1598 245. How did those prices compare with the rates prevailing during the time you were engaged in the construction of your plant and for a year preceding the time you began to furnish gas in Peoria?

A. The net prices during that year as I remember were $1.25 for light and 75 cents for fuel.

246. Is it not a fact that your company made a good deal of capital out of the fact that about the time your ordinance was presented the old company had cut the rates on illuminating gas from $1.35 gross to $1.00 even?

A. I don't think so; I was not here during the time the ordinance was pending, with the exception of the time I stated yesterday, and I had no understanding at that time that that was being used as an argument or that it was an important factor in the mind of anybody.

247. Then if it was so used it was without your knowledge or cooperation, was it?

Ans. Yes sir.

248. Permit me to refresh your recollection and ask you if it is not a fact that for at least a year before you began to serve gas the

regular rate for illuminating purposes had been $1.00 and the regular rate for fuel purposes 75 cents without any rebate on either?

A. I don't think it was a year; my recollection is that at the time the ordinance was pending, which as I remember was along in the latter part of March and first part of April, 1899, the Peoria Gas Light & Coke Company changed its rate from $1.25 for light and 75 cents for fuel to $1.00 all around, and that rate was in force when the ordinance passed and for some little time afterwards, I don't remember how long, but some weeks. I think that rate continued in force up to about the time we commenced to supply gas.

1599 249. What, if any difference, did the existence of those rates, during the period covered by your construction make in your plans?

A. Not any.

250. When if at all since the time referred to by you when you met Mr. McKinley and others in Chicago and the rates were discussed, have you had any conference with the management or representative of the Peoria Gas Light & Coke Company with reference to the same subject matter?

(Objected to as immaterial.)

A. I don't recall any conversation on the question of rates.

251. During the time covered by your residence in Peoria have there been more than two public gas plants, or gas plants, engaged in the manufacture and distribution of gas for public purposes?

A. No.

252. During what portion of that time have both of those plants been in operation, manufacturing and supplying gas to consumers in Peoria?

A. Since we commenced up to about the first of last November.

253. Since that time how many gas companies have been manufacturing?

A. Since about November 1st, 1901, the gas has all been made in the plant of the Peoria Gas & Electric Company.

254. When within your knowledge was it determined that the manufacturing plant of the Peoria Gas Light & Coke Company would be shut down?

(Objected to as incompetent and immaterial.)

A. It was some time last October.

255. What were the circumstances leading up to the determination of that question so far as your knowledge extends?

Objected to same grounds.

A. I received a letter about October 2nd, 1901, from Mr. McKinley, president of the Peoria Gas Light & Coke Company, stating——

256. (Interrupting.) I am not asking for the contents of the

1600 letter but the circumstances which led up to the determination of that question.

A. That was the immediate circumstance; he asked for a proposition from the Peoria Gas & Electric Company for supplying them with gas; I answered that by giving them a proposition and it was followed up by a contract between the two companies.

257. I don't care to have you state the contents of papers. Was that the initiative in the proceedings resulting in the suspension of manufacturing operations on the part of the Peoria Gas Light & Coke Company?

A. So far as I knew; I know in a general way their plant was getting into a bad condition, but that I learned chiefly from Mr. Eustace, who was then their superintendent, and as he had been in our employ I would talk with him from time to time when I met him.

258. You have no personal knowledge of that?

Ans. No sir.

259. Did you know at that time how recently the stack of the Peoria Gas Light & Coke Company had been entirely rebuilt?

A. I knew they had put in new benches somewhere about nine or ten months before that; their benches were started up just before ours.

260. Is it not true that about that time their entire stack was rebuilt and the newest and most modern furnaces installed?

A. Do you speak of a stack in a gas man's nomenclature?

261. Yes that is what I mean.

A. Yes they had a new stack of benches.

262. Had you ever prior to July 31, 1900, made a thorough examination of the manufacturing plant of the Peoria Gas Light & Coke Company for the purpose of determining its efficiency and physical condition?

Ans. No, I had not.

263. Then any opinion you had upon that question was entirely hearsay was it not?

1601 A. Yes sir, that is anything more than what I could see from looking it over from the outside.

264. The operating plant proper, with the exception of the holders, was entirely within the building was it not?

A. Yes sir, I knew nothing about the condition of the plant except by hearsay.

265. Did you know how recently the holders had been built?

A. No.

266. What was their condition so far as they appeared to you?

A. They looked as if they were being used.

267. And apparently they were as good as ever?

A. Of course they would never be as good as ever, for they would be subject to the ordinary depreciation, but they were in a usable condition.

268. Did you know at that time that within a comparatively recent period many of the buildings had been built new?

A. No, I didn't know that.

269. Didn't they have that appearance to you as you saw them from the outside?

A. The old retorts did not look so; the purifying house looked to be all right; the holders looked to be all right so far as I could see.

270. The old retort house was not in use at that time at all?

A. No not after July 31, 1900.

271. Has it been in use since you came to Peoria?

A. Yes it was in use up until the latter part of February, March or April 1900.

272. Was that the time the new stack was completed?

A. Yes sir.

273. State whether or not pending negotiations which resulted in the arrangement by which you undertook to furnish gas to
1602 the Peoria Gas Light & Coke Company, you had any conversation with Mr. McKinley, or any other gentleman representing his company, upon that subject?

(Objected to as incompetent and immaterial.)

A. No, I think not; I think the proposition, as I say, was made by letter and was answered in writing by myself, and not until after the acceptance of that proposition, the general acceptance,—it was modified somewhat before the contract was completed—not until after that did I have any conversation with him or visit the plant or see anybody about it.

274. Was that the first time you had ever visited the old company's plant?

Ans. No.

275. On what former occasions had you been there?

Objected to as immaterial.

A. The only time I now remember was along in 1895 when I was in Peoria and went in the plant.

276. Was the plant then in full operation?

Ans. Yes sir.

277. And it was the only one supplying gas in the Peoria territory?

Ans. Yes sir.

278. Within your knowledge has it been in operation continuously since?

A. I do not know about that of course.

279. Did you know at that time how long the plant had been in operation?

Ans. No sir.

280. Do you know now?

Ans. I do not.

281. Is it not true that a gas plant kept in repair will last indefinitely?

Ans. No it is not.

282. Why not?

Ans. Because it is subjected to the action of the elements; it is subject to antiquation by reason of changes in processes and methods and subject to the depreciation which any manufacturing plant must meet, and a special depreciation due to the particular kind of business for which it is used.

1603 283. Without referring to the question of the mechanical appliances becoming antiquated, is your answer the same?

A. Yes sir.

284. Is it not true that it is necessary to keep up repairs constantly on a gas plant?

A. Yes sir.

285. And is not the same thing true of any manufacturing plant?

A. Yes sir.

286. What portions of a manufacturing gas plant are subject to the greatest depreciation from actual use in the process of manufacture?

A. The retorts themselves would be the first to suffer and would suffer the greatest depreciation; next would come the arches.—I am speaking now with special reference to the manufacturing plant—then probably the boilers, furnaces and the mouth-pieces to the retorts.

287. You mean by that do you the cast iron facings?

A. Yes sir, the retorts themselves are fire clay and the mouth pieces I refer to are the cast iron facings or doors that close the retorts with their frame. Then the tar extractor, washers and condensers.

288. In speaking of those do you refer to the whole devises themselves or only certain parts?

A. In the case of the tar extractor I refer more to the working parts inside of the shell of the tar extractor; cast iron will not depreciate much but the internal parts depreciate rapidly.

289. Are those driven by power for the purpose of agitating the——

A. (Interrupting.) No, a tar extractor is made of two or more sheets of steel set in a vertical position; one of the sheets contains very small round holes, generally about one-eighth of an inch in diameter and that we call the face sheet; the next one setting

1604 behind it has slots and is so arranged that the gas, being forced through the round holes, infringe on the flat surface of the plate and miss the slots, the result being to offer a mechanical obstruction to the gas carrying the tar or heavy carbon or hydrocarbon that runs down on these plates and the action of the sulphur in the gas eats the plates on the edges and quite quickly destroys them; there is a water seal in connection with that and a counterbed and the amount of plates exposed to the action of the gas is determined by the gas pressure; it rises and falls; the washer has an arrangement of toothed plates, every other one of which is submerged in water or ammoni-cal liquor, and the gas forced by pressure down under those and up again gives it a tortuous course, washing out

the ammonia in the gas. The action of the sulphur and ammonia destroys those plates rapidly.

290. Then does this ammonia, or water charged with ammonia, after it reaches a certain degree of richness run to the ammonia well or cistern?

Ans. Yes sir.

291. Is this iron face of the retort front separate in each retort?

Ans. Yes, attached separate to each retort.

292. So if you desire to replace a retort again that could be done without disturbing the others in the bench?

A. No you could not replace another retort unless it should happen to be the top one; they are supported on tiles that are built from an arch over the combustion chamber and each retort is used in a measure as a bearing for the retorts above.

(The MASTER:)

293. Do you mean by that, if the under one should give away that all above that would have to be taken down?

A. Not all, but all immediately bearing on it would; you might take out part; it depends on the tile arches.

(Mr. TICHENOR:)

1605 294. I think you have testified that in a modern regenerative furnace the heat is more intense and the combustion more rapid than in the old style open furnaces. What is the advantage gained, if any, by the introduction of what is called the modern furnace or improved furnace as you have described it?

A. A higher heat results in a greater production of gas per pound of coal carbonized that has to be taken into consideration in the life of apparatus, cost of it, and it usually is figured and considered the proper thing to do.

295. If I understand your former testimony, in that form of furnace there is a sort of secondary combustion in the immediate proximity of the several retorts themselves so the heat is more directly applied than it would be in the old form of furnace?

A. Yes sir.

296. Those retorts were formerly made of cast iron were they not?

A. Ye- sir, in the early days of the gas industry.

297. But they were substantially the same in mechanical operation as the modern retort?

A. Yes, that is to say, the theory was the destructive distillation of coal in an enclosed retort from which the oxygen was excluded.

298. And the gas would be driven in what is termed a stand pipe?

A. Yes, through a standpipe through the hydraulic main.

299. What is the life of a modern bench as compared with the life of an old bench in a general way?

A. I should say as a general proposition, all the benches that

have been built within say the last ten or fifteen years, that the arch itself would last about as long under the modern system as the old arches used to last. That is to say, within the last relatively few years the arches and the dividing wall between the various arches have been made much heavier and with a better class and grade of material than was formerly used and that heavier
1606 and stronger construction is intended to protect against the higher heats, the result being that the type of apparatus in general use now I would say would last just about as long as was customary with most of the old forms of benches; that is a question that is determined almost entirely by each engineer; there is no set of rules I am familiar with for the thickness of the arches or the thickness of the division walls, and I have observed a great deal of difference between them, all of which has its bearing on the life of a bench.

300. How does the present life of a retort itself compare with the old form of retort when iron was used?

A. That depends almost entirely upon the manner in which the retort is constructed and handled; there is a considerable variation in retorts made by different people and a considerable variation in the way in which the retorts are handled, but generally speaking I should say the present retorts would last about as long as the old fashioned retort.

301. What is the comparative cost of the construction of a stack at the present time as compared with its cost when the old form of retorts were used?

A. I think it is very much greater now—probably fifty per cent. greater.

302. To what is the additional expense mainly due?

A. A better class of material, heavier construction and more used.

303. Did you in your former answer intend to cover the life of a stack proper or did you intend to confine your reply to the separate portions to which you specifically referred?

A. We always speak of a retort separate from the bench. That is to say, a bench consists of one or more arches in which are located the furnaces or combustion chamber and retorts
1607 themselves. Now every arch will stand a number of refillings, that is to say, new furnaces, new retorts, new combustion chambers are put into the arch and when we speak of the life of a stack we generally mean the life of the brick work in the arches as distinct from the filling of the arches.

304. Over what period of years ordinarily can that filling be replaced so as to make the arches themselves reasonably effective and serviceable?

A. Most arches will last anywhere from eight to twelve or thirteen years and in exceptional cases where the benches are not worked hard and have had unusual care they will run longer, perhaps fifteen years.

305. Under the present system of driving off the gas is it not in-

tended to keep the heat at practically a uniform point during the process of destructive distillation?

A. Yes sir, within certain limitations. That is to say, if your consumption is increasing on you rapidly it may be desirable to get a larger production of gas out of the coal, especially if it is a temporary increase rather than heat up another bench; in that event you raise your heats, or if your consumption was falling off but not enough to shut down a bench you reduce your heats; but, as a general proposition, you aim to keep your heat as near uniform as possible subject to those variations.

306. What is the effect in the quality of the gas produced in low temperature as compared with high temperature?

A. That depends a good deal on the coal and a good deal on the surrounding conditions. As a general proposition a relatively low temperature, which is not too low, gives a little better grade of gas than a high temperature. In other words, the first gas that comes off from the coal is richer in hydro-carbon; has more candle power and more heat units than the gas that comes off the last end
1608 of the burning off of that charge.

307. You are speaking now of the common volume, the volume being the same.

A. Yes the object of the higher heat is to drive off the greatest amount of gas contained in the coal; of course we never get it all.

308. It is true, is it not, that in a gas plant very little mechanical power is required?

A. Yes, very little relatively, that is, very little motive or rotating power.

309. And engines, pumps and the like of that are subjected to the same load in the same way they would be subjected to in any other form of industry?

A. Not quite the same; the engines used are used to run the exhausters and for converters or some machinery of that sort; in the case of the exhauster, an exhauster engine should last longer than most other engines; a converter engine used intermittently and often and subjected to severe strain while used would perhaps find harder service than most engines are put to.

310. Those converters are for moving coal?

A. No, in our plant we use them only for oxides which require a good deal of power while it is in use, that is, if we are in a hurry we crowd it hard.

311. The load carried by the exhauster is nearly constant, is it not?

A. Yes sir, very nearly a constant load, but the pumps are often driven hard, then again stand idle.

312. Those pumps as I understand it carry nothing but water You have no pumps for moving tar or ammoni-cal liquor?

A. Yes we pump tar and ammoni-cal liquor and oil with them.

313. Those are ordinary steam pumps, are they not?

1609 A. Yes sir.

314. My recollection is in your examination heretofore you have spoken of changes necessitated in a gas industry by reason of improvements. Is it not true that in any form of industry the same subject is an item of importance. Are not all different manufacturing interests affected more or less by development in particular lines and by improvements which necessitate changes in mechanical appliances?

A. Unquestionably so, to a greater or less degree according to the nature of the industry.

315. Is it not also true in making changes of that character dispensing with one method of manufacture and substituting another, it is done for the purpose of increasing the earning capacity of the plant?

A. That is true as a general proposition but it is also subject to exception.

316. But the idea of making a change of that kind is to better the condition of the plant?

Ans. Yes sir.

317. I think you also testified that the expenses of distribution have been materially increased in modern times. Is my recollection correct?

Ans. Yes sir.

318. To what is that fact due?

A. It is due to two or three conditions; partly to the fact that better service from gas companies is attempted, that is to say, they are required to keep their mains in better condition; an amount of leakage that would have been permitted by city authorities years ago would not be permitted now, it would be considered a nuisance, and the traffic being heavier in the streets more care has got to be given to your main system to see it is in proper order. The principal thing, however, is a general change in the method of con-

1610 ducting the business. That is to say, gas companies generally realize today that they are selling a standard product at retail for which they must find a market and they don't simply wait for such business as comes to them but try to get it; they look after complaints better, look after customers' desires and needs better; then there has been an increase in the advertising and what might properly be termed the promotion expenses of the business, advertising, soliciting, getting customers, trying to sell gas, increasing the business.

319. What is the comparative hazard to which the pipes are exposed in unpaved streets as compared with the same in paved streets?

A. That depends a good deal on the manner in which the pipes are laid, the depth of covering and the kind of soil.

320. I was speaking with reference to the traffic.

A. I was going to say if the pipes lay deep enough then the sur-

face traffic does not materially affect them whether they are under paved or unpaved streets.

321. Under the modern form of paving streets is it not true that the pipes may be laid very near the surface and not be subjected to the slightest damage or the slightest hazard.

A. I would not conside- it so; I would consider it desirable to keep the pipes as low as possible; if I had to lay them near the surface I would be watchful of them.

322. Is it not true that before any damage could be done to any piping system the concrete base of the street must necessarily be broken?

A. That would be true as to mechanical injury but if your pipe lay sufficiently near the surface of the street so it felt vibrations the effect of that would be shown in a comparatively short time by the weakening of the joints of the pipe and might very materially increase the expansion and contraction due to changes in
1611 atmosphere.

323. Is not that hazard very largely overcome by the modern joint?

A. No, I think not; the joint is practically the same as made twenty-five or thirty years ago, only it is made heavier and stronger.

324. Is not a joint known as the pocket joint used in gas pipe?

A. That has been used for 25, 30 or 40 years.

325. And it is laid in substantially the same way?

A. Yes sir, except that some companies use cement for we will say three joints out of every four or four joints out of every five, then they put in a lead joint; every third or fifth joint will be lead in order to take care of the contraction and expansion.

326. That cheapens the expense does it not?

A. I don't think it does; my experience has been that the extra care required to make a good cement joint offsets any decrease in the cost of material used; it is just a question of whether you want to take the chance of having the pipe pull apart and make a complete break or whether you will be content to have a number of small leaks.

327. Is it not true that all of this detail you have referred to tending to increase the expense of distribution is all done by gas companies for the purpose of increasing their business and revenue?

A. Some of them are but not all of them.

328. Soliciting, advertising and everything of that kind is done for the purpose of getting business?

Ans. Yes sir.

329. The same as is done in any other line of business?

A. Yes sir.

330. And it is done with the expectation it will increase the net returns?

Ans. Yes sir.

1612 331. How long is it since your company has employed any solicitor?

A. I think the last soliciting we did was to get some business down in the eighth ward where we could not lay mains—we got shut off there and we quit and have not done any more soliciting except we keep one man out most of the time during the summer season selling gas stoves.

332. How long ago was it you were at work in the eighth ward?

A. I think it was in the fall of 1900 or the spring of 1901.

333. Is it not true that since the 31st of July 1900 there has been practically no soliciting done on the part of either gas company in Peoria?

A. No, we have worked as hard as we could to sell gas stoves; we keep one man going the proper season at work at it and a portion of the time two.

334. But there has been no soliciting done in any other direction except in an effort to sell gas stoves?

A. Yes, we solicit light as well as fuel; we solicit for light in the fall and fuel in the summer and spring.

335. Have you done that continuously?

A. Yes sir, up till now and are doing it now.

336. You do that for the purpose of extending your business?

A. Yes sir, trying to extend the business and sell more gas.

337. Is it true that the more gas is sold the greater the profit to the company?

A. Necessarily so if you are selling at a profit.

338. In the main then, if I understand your explanation, all of those questions are managed in precisely the same way as similar questions are handled in any manufacturing industry, the idea being to extend the business more and more?

A. The only difference between our business and any other
1613 business is we make the stuff ourselves and we have a limited field in which to sell; we have not got a general market.

339. I think your former testimony shows that the plat offered in evidence correctly presents the ground and buildings of complainant company as they existed at that time. Is that correct?

A. Yes sir, at the date of the plat; I think that plat is substantially correct as the plant was at that time.

340. Are the figures indicating dimensions and material of that character as shown on that plat also correct?

A. I think so; I did not take the measurements myself except as to part of them but my instructions were to take careful and accurate measurements and mark them exactly on the plat.

341. That is supposed to be a scale drawing in every respect made by an engineer skilled in that line of work?

Ans. Yes sir.

342. How much ground in acreage has your company at that place?

A. I cannot tell without figuring, for I never figured it that way;

as I remember we have two pieces, one piece is substantially about 335 by 320 feet square—it is not a true rectangle; then we have another piece 110 feet by substantially 300 feet—it would be nearly three acres all told.

343. Was all that property purchased at about the same time?

A. Yes sir, the main piece was bought first and the other piece was bought shortly afterwards.

344. What proportion of that area is at the present time occupied by your manufacturing plant?

A. About three-fourths of it.

345. And about one-fourth of it is unoccupied?

A. No, the other one-fourth is occupied for the storage of materials of various sorts.

346. Is it not a fact that at the time that purchase was made it was the intention of your company to use it for the location
1614 of an electric plant as well as the gas plant?

A. No, not at the time the purchase was made; we were undecided at that time whether we could get in an electric light plant on that ground or not and we were also undecided as to the amount of coke storage that would be required or how much ground would be required to store coke; we should have bought such ground as there is there without any electric light plant.

347. Is it not true that in Peoria the coke market takes your product substantially as fast as it is manufactured?

A. No, the local market here absorbs not to exceed $\frac{2}{3}$ and generally not more than one half of the coke produced.

348. How much do you ordinarily carry in stock?

A. It depends on the season of the year; there is no particular sale for coke in the summer time outside of the industry and we have to accumulate anywhere from 2,000 to 3,000 or 4,000 tons during the summer time.

349. How much area would reasonably be required for the storage of that quantity of coke?

A. Well, if you store it as it is usually stored you would want pretty nearly two acres for it.

350. That hardly answers the question. How much ground would reasonably be required to store the coke there?

A. That is what I mean, that much would be a reasonable requirement; of course, if you want to go to the expense of building an expensive building up in the air, you could put more of it on a less space but the amount of ground necessary to take care of it where you merely wheel out of the retort house and dump it—the amount necessary to store in this market—would be about two acres.

351. Is it necessary for coke to be protected from the weather in order to preserve its usefulness?

A. Not for ordinary trades there are certain trades which
1615 demand a dry coke and then it should be shedded.

352. How does your company store it?

A. Out of doors.

353. Have you always done so?

A. Not always, we built the shed in the corner of the ground next the river for the dry storage of coke and have had coke in it several times and expect to use it in that way.

354. Do you know how much ground there is in the plant occupied by the Peoria Gas Light & Coke Co.?

An. No, I do not.

355. Do you know whether it — greater or less than yours?

A. Yes, it is considerably greater than ours.

356. Do you know whether it is all occupied?

A. No, I do not, only in a general way, I know that the bulk of it is used in some manner at some time of the year but just how much in proportion I could not tell.

357. Is that also the case since they have discontinued the manufacture?

A. The buildings are there and they have had coke in there until very recently.

358. The plat offered in evidence and to which you have recently referred covers all the improvements, as I understand you, as they were at the time the plat was made?

A. Yes, I think that covers everything that was on the ground at that date.

359. You had one ammonia well and one tar well, did you?

A. We had one well for ammoniacal liquor, crude liquor, and one well for the concentrated liquor and one tar well.

360. What is the capacity of each of those ammonia wells?

A. The crude ammonia well has a nomical capacity of 22,722 gallons and an actual capacity of somewhere about 17,118 gallons; the concentrated ammonia well has a nominal capacity of
1616 8,350 gallons and an actual capacity of from 7500 to 8,000 gallons.

361. What is the difference in the two classes of stock which you store in those wells?

A. The crude liquor is the liquor just as it comes from the apparatus and it is then redistilled and concentrated in strength for the purpose of sale and after being concentrated it is stored in the other tank.

362. What is the capacity of the tar well?

A. Nominally about 51,000 gallons and actually about 30,000 or 35,000, due to the fact that the off-take pipe necessarily had to be put lower down from the top than was originally intended.

363. At what point do you divide the expenses between manufacturing and distribution—those are the two grand divisions, are they not?

A. Yes sir. We divide the manufacturing expense from the distribution expense at the yard. That is to say, the materials and labor employed inside of the gas works yard, with the exception of our fitting shop and store room, goes to the manufacturing cost. Outside of the yard goes to the distribution cost, except as to such

expenses as go to administration. We do not make merely the two divisions of manufacturing and distribution but we have manufacturing distribution and general expense or administration.

364. As I understand you then, everything pertaining to original construction, improvements or repair in the manufacturing plant proper, including holders, is charged to manufacturing?

A. No, nothing in the way of construction is charged and nothing in repairs is charged. The manufacturing under our system is merely the cost of manufacture, then we have repair account in addition to that which takes care of repairs and a construction account which takes care of construction.

365. Do you mingle those in any way so as to make them
1617 a part of either your manufacturing or distributing accounts, or are those entirely separate and distinct and carried as such?

A. Entirely separate and distinct.

366. In what way, if at all, do those items enter into the account which you keep of the actual cost of gas delivered to consumers?

A. Which item do you refer to?

367. Construction, improvement, repairs.

A. They do not enter into that question at all.

368. Are they not taken into account?

A. All the construction, improvement or extension accounts at the close of the fiscal year are closed into the general plant account or additions to property; the operating accounts, which include the repairs and maintenance, are closed into profit and loss.

369. What items do you charge to distribution?

A. First the wages of the superintendent of distribution; the wages of meter readers, meter setters, the pumping of drips, the routine work incident to repair of the main system, plus any distribution supplies, such as any small articles used to fix up consumers' stoves or apparatus, or anything of that kind that is given gratis and meter boxes and that sort of thing.

370. Do any office expenses go into that account?

Ans. No sir.

371. In other words then, all of those items pertaining to material and labor in the field?

Ans. Yes sir.

372. Were those items taken into account in your former testimony wherein you testified to the cost of gas?

A. Yes sir, those were all included.

373. Does your company maintain more than one office?

A. We have a works office at the works, but only one general office, excepting that the general books of the company are kept in Chicago.

1618 374. Do you also keep a complete account of everything in Peoria?

A. No, not of everything. We don't have anything here in Peoria

with reference to the general accounts, or assembling of the accounts, and the general ledger is kept in the Chicago office.

375. And all the material which ultimately finds its way into your general ledger is in Peoria in the first instance necessarily?

A. Yes sir.

375. Is the office work for the electric part of your business kept and handled in the same office?

Ans. Yes sir.

376. And handled by the same men?

A. Not by the same men necessarily; that is to say, we have an electric cashier, whose work is entirely on the electric accounts; a gas cashier, whose work is entirely on the gas accounts, and we have one clerk who works on electric accounts and another clerk who works on gas accounts in the book-keeping of our office here.

377. And are those charged to the different accounts?

A. Those are charged one set to the electric expenses, the other to gas expenses; then the remaining salaries are prorated monthly to the two businesses according to the amount of work done each month.

378. That depends on the amount of work done in each of the two departments?

A. Yes sir, we keep as close track as we can of the amount of work done by the various clerks and try to see that each department gets its proper proportion of the charge.

379. Is that rule followed also with reference to officers' salaries?

Ans. Yes sir.

380. How is it with reference to rentals?

A. That is divided between the two branches.

1619 381. My recollection is you testified before in this case that the possibility of natural gas is in the nature of a hazard to one engaged in the gas business. Near Peoria has natural gas in paying quantities yet been discovered and put into actual use?

The MASTER: The witness was fully examined with reference to that when he was on the stand before on the part of the complainant and I do not think I will allow you, Mr. Tichenor, to cross examine him now on such matters as were proper subjects of cross examination when he was a witness in chief before.

Mr. TICHENOR: I do not see why we cannot make him our own witness and examine him as broad as we please.

The MASTER: I don't know of any rule that will allow you to make him your own witness and go over the same subject — went over in his examination in chief before on which he was cross examined, or if he was not cross examined about it the opportunity was there for cross examination. I do not think I will permit you, unless the court directs me so to do, to open up the examination in chief of this witness again simply because he is called as your witness.

Mr. TICHENOR: I never heard of that rule before, although it

may be true. Suppose the witness was not cross examined at all when on the stand before?

The MASTER: Then I do not think you could recall him now and cross examine him on the same thing when you waived the cross examination before. That is my impression but, if you desire to press the inquiry, you may go on with the examination.

Mr. TICHENOR: If I am wrong I do not want to press the inquiry.

The MASTER: You have called this witness as your witness; you do not claim, do you, by reason of his being called as your witness you can now direct an examination in chief to him that was available to you upon cross examination when he was called as a witness for complainant?

1620 Mr. TICHENOR: That is what I am maintaining but the master thinks I am wrong.

The MASTER: I do, but of course, I cannot exclude the testimony.

Mr. TICHENOR: I do not propose to go into any field or line of examination to get it into the record simply because I can do so. If I am wrong, I want to know it and for the time being I will accept the master's ruling.

382. Early in your examination you referred to a contract made with the Peoria Gas Light & Coke Co. under which your company is now furnishing that company with gas. When with reference to October 24, 1901, was that contract made—I am speaking of its actual execution.

Objected to as incompetent, immaterial, not the best evidence.

A. I think it was made a few days before that.

383. Who participated in the negotiations which led up to the execution of that contract?

Objected to as incompetent, immaterial because whatever negotiations were had were merged in the written contract.

A. I don't think anybody but myself and Mr. McKinley. That is to say, I submitted the matter to our board of directors and was authorized by them to make a contract and when the contract was drawn it was signed by me and sent to Mr. McKinley for his signature.

384. What is your recollection as to whether or not that authorization was given at a meeting of the board of directors?

A. Yes sir, it was given at a meeting of the board, I am quite clear.

385. State whether or not the subject matter was also presented to Mr. Walsh and Mr. Walton?

Ans. Yes sir.

386. Where, in Chicago or Peoria?

1621 A. I do not recollect; my recollection now is I called Mr. Walton on the telephone and talked with him about it; it was a telephone conversation between Mr. Walton and myself.

386. How long were negotiations pending before the instrument was actually executed?

Objected to as incompetent and immaterial.

A. I should say approximately about two weeks—between two and three weeks.

387. Who, on the part of your company, had to do with fixing the price to be charged the old company for such gas as you were to furnish under that contract?

A. I did; I gave my recommendation of what I thought we could afford to do it for and presented it to the board and talked it over with Mr. Walton as I now remember it.

388. Did you also discuss the subject with Mr. Walsh?

A. I think not; I think I had no personal talk with him about it.

389. In how many parts was that contract executed?

A. In duplicate, one for each company.

390. Have you with you at this time your company's copy of the contract in question?

Ans. Yes sir.

391. Are you willing to produce it?

A. Yes sir (witness producing contract).

392. Has this contract been in your possession all the time since it was executed?

A. It has been in the vaults of the company here.

393. State whether or not the price provided for in that contract has actually been charged by your company to the Peoria Gas Light & Coke Co. and by it paid for such gas as you have furnished it?

A. It has all been charged and all been paid except the
1622 last month.

394. How and when are those payments made?

A. Monthly in cash.

395. Have those settlements been made monthly during the time the contract has been in effect?

Ans. Yes sir; I think one month run over until the next but I think that is all.

396. Who makes the payment to your company?

A. The cashier of the Peoria Gas Light & Coke Co.

397. Is he a resident of Peoria at work here?

Ans. Yes sir.

398. What constitutes the basis upon which those settlements are made?

Ans. The terms of the contract.

299. Yes, but how is the amount arrived at?

A. By taking the amount of gas delivered to them, as shown by the station meter, and the amount of gas sold, as determined by the sum of the consumers' meters. That amount of gas is charged to them at the price of the contract and the leakage or loss of gas is charged at another price, as shown by contract.

400. Who keeps the record of the station meter—takes and keeps it?

Ans. Either Mr. Eustace, the superintendent, or Mr. Barber, the store-keeper.

401. How frequently is that taken?

A. I think twice a day—that is my instructions.

402. Has anyone else access to the meter house?

A. Not that I know of.

403. You are referring to the meter of the Peoria Gas Light & Coke Co., are you not?

Ans. Yes sir.

404. Who takes the meter statement of consumers of the Peoria Gas Light & Coke Co.?

Objected to as not the best evidence, it is virtually asking for the terms of the contract which has been shown to be in writing and has not been offered in evidence.

A. Our employés.

1623 405. To whom are those reported in the first instance?

Objected to same grounds.

A. They are reported in the first instance to our superintendent of distribution.

406. Who pays the wages of the men taking the meters to which you have just referred?

A. The Peoria Gas & Electric Co.; they are its employés.

407. Those meter statements are taken monthly, are they?

A. Yes sir.

408. Has this method, which you have described with reference to determining the quantity of gas furnished by your company to the Peoria Gas & Electric Co., obtained continuously since October 24, 1901?

A. Since the latter part of October, I have forgotten the exact date, but it was along about the 24th of October, 1901.

409. State whether or not you keep a record from month to month of the readings of the meters of consumers of the Peoria Gas Light & Coke Co.?

A. Those entries are made in the route books which belong to the Peoria Gas Light & Coke Co.; each meter reader has a route which he follows in reading his meters and a book is given him which covers merely the consumers upon his route; that book is the property of the Peoria Gas Light & Coke Co.; the reading of the meters is done under the supervision of our superintendent and the book is turned in to him by the meter reader, he looks it over and checks it in any manner he wants to for his own information and turns it over to Mr. Bickwell in the office of the Peoria Gas Light & Coke Co.; a statement is made up from the book and sent back with the book to us for verification; our clerks take it and check the statement with the original books; the two cashiers then O. K. the statement and the book goes back into the custody of the Peoria Gas Light & Coke Co. and remains there until the next month.

1624 410. Prior to the time these books, to which you have referred, go into the hands of your superintendent of distribution, is there a record made in your office of those readings?

A. No sir, we have no record of it.

411. Does your superintendent of distribution make a record of those readings while the book is in his hands?

Ans. No sir.

412. Is there kept in your office a record of those readings?

A. No sir.

413. Have you anything on your books of account or records at this time showing from month to month the quantity of gas you have furnished to the Peoria Gas Light & Coke Co. since you first began furnishing it?

A. Yes sir, we have a record of the total amount but not of the meter readings.

414. When is that total taken?

A. Taken at the close of each month—the last 4 or 5 days of each month.

415. With reference to the time the work of taking the statements is completed is that summary made up in your office before the original books go to your superintendent of distribution?

A. No the meter readers do not make any entry except simply the figures of the state of the meter; they make no subtraction to ascertain how much each customer has used; those subtractions and the sums of the different amounts are made in the office of the Peoria Gas Light & Coke Co.; the book is then sent back to us and the subtractions are then made by our clerks and the sum of the amount of gas consumed, as shown by the books, is entered up and our statement is then compared with theirs.

416. And those summaries are the entries you have in your own books to which you have referred?

Ans. Yes sir.

417. And that constitutes the basis of your statement from
1625 month to month?

Ans. As to gas furnished, yes sir.

418. Is the contract, concerning which you have testified, as having been made between your company and the Peoria Gas Light & Coke Co., which went into effect on or about October 24, 1901, the document now shown you marked "Exhibit 32"?

Ans. Yes sir.

419. Have any additions or modifications been made to that instrument since it was originally executed in writing or otherwise?

Ans. No sir, not that I am aware of.

420. State whether or not the instrument as it now stands is still in full force and effect and being operated under?

A. It is being operated under, although our company has been notified that under the conditions of the contract it would be cancelled on or about August 15th next.

421. But at the present time it is in full force and effect?

A. At the present time it is in force and is being operated under.

422. How frequently are the readings of the station meter of the Peoria Gas Light & Coke Co. sent to your office?

A. The readings are not sent to the office; I get a daily report from the superintendent showing the amount of gas that has been delivered to the Peoria Gas Light & Coke Co. but the reading itself is not sent to the office.

423. It is different in that respect from the taking of the meter statements?

Ans. Yes sir.

424. Do you mean by your former answer the amount that has actually passed through the station meter, or the amount that has passed into their mains?

A. I mean the amount that has passed into their possession through the station meter—the amount delivered to them; I have no means of knowing whether it is in their holder or in their mains.

1626 425. In those figures sent to you showing quantities delivered, is any account whatever taken of temperature or barometer?

A. The amount is stated after the correction has been made.

426. In determining the volume of gas for which the Peoria Gas Light & Coke Co. is to pay, how are the figures coming from the station meter and those coming from consumers' meters used?

A. I don't understand you exactly.

427. In determining the volume of gas for which the Peoria Gas Light & Coke Co. shall settle at the end of the month, do you use the station meter figures or the consumers' meter figures?

Ans. The station meter figures, after being corrected, are used in determining the volume of gas which they pay for.

428. Do you take into account at all at the end of each month the volume of gas consumed as shown by the individual consumers' meter reading?

A. Yes, that is paid for at one price and the difference between that and the station meter reading, which is the loss of gas or unaccounted for gas, is paid for at another price.

429. A little while ago you spoke of having received notice of a proposed cancellation of this contract; when was that notice given?

A. It is dated February 15, 1902, and I received it either February 15th or the day following.

430. Did it come to you through the mail?

A. My recollection is it came to me through the mail.

431. Since the contract in question became operative, has there been any change in the method of arriving at the amount to be paid monthly by the Peoria Gas Light & Coke Co. to your company?

A. I think none that I know of.

432. Are there any corrections for temperature or otherwise made in the volume of gas as reported from the meters other than

627 as you have now testified?

A. No; the correction for temperature you know is made

to bring the temperature of the consumers' meter as near as possible to the average temperature of the gas going out; that is the object of making the correction. Gas increases in volume as the temperature rises; nearly all consumers' meters are set at places where the temperature is lower than the temperature of the station meter or of the holder; the station meter registers the gas going into the holder; now the amount made during the day is accounted for at the station meter but the amount sent out is made by taking the reading of the holder itself—our rule is at 7 o'clock—and either adding or subtracting the gain or loss in the holder as the case may be. Now experience and discussions in the various associations of gas men have shown that experiments made prove that the average temperature throughout the year of a given number of consumers' meters is about 70 degrees. Now, if the outside temperature and the temperature of your station meter is more or less than 70 degrees corrections are made correspondingly so as to get at the true volume going out. In other words, there would be a discrepancy in the summer time, the gas would be registered at a lower temperature and the consumers' meters would show less in proportion than the storage holder and station meter; in the winter time it would be the reverse; so to ascertain what is the true loss or unaccounted for gas between the works and consumers' meters corrections are made for temperature. In this locality it is not a matter of much importance but further north or further south it is important.

433. Then the volume as corrected constitutes the basis for all your subsequent work?

A. Yes sir, it constitutes the basis for all our calculations.

1628 434. State if you to any extent participated in the proceedings resulting in the increasing of the capital stock of complainant company?

Ans. Yes sir.

435. Do you know what the reason was for increasing that stock?

A. Yes sir.

436. What was it?

Objected to as immaterial and irrelevant.

A. It was primarily for the purpose of obtaining the electric lighting plant.

Complainant objects to the answer as immaterial and irrelevant and moves the court to exclude it.

437. When did you- company acquire the electric lighting plant?

Objected to as immaterial, irrelevant, incompetent and not pertaining to any issue in this case.

The MASTER: I think I will let him answer that.

A. My recollection is it was in February, 1901, but I am not quite clear about that; I could not tell definitely without reference to the records of the company.

438. In what manner was the acquiring of the electric lighting plant accomplished?

Objected to as immaterial, incompetent, irrelevant and not the best evidence.

The MASTER: Do you mean by that, was it done by acquiring the stock or physical property?

Mr. TICHENOR: Yes sir.

The MASTER: What difference does it make?

Mr. TICHENOR: Quite a good deal.

The MASTER: He may answer subject to the objection.

A. The Peoria Gas & Electric Co. bought the property and assets of the Peoria General Electric Co.

439. Do you know whether or not at that time and in making that purchase your company also received the capital stock of the electric lighting company? 1629

Objected to as incompetent, irrelevant, immaterial and not pertaining to any issue in this case.

A. No sir, it did not.

440. Under what authority was that purchase made?

Objected to same grounds.

A. I don't quite understand the question. It was made by the company.

441. Yes, but who authorized the purchase to be made?

Objected to as incompetent, irrelevant, immaterial and not the best evidence.

A. The stockholders of the Peoria Gas & Electric Co.

442. Prior to that time, had the Peoria Gas & Electric Co. been engaged in the electric business?

Objected to as incompetent, immaterial and irrelevant.

The MASTER: I don't think it material.

Mr. TICHENOR: I would like to have the question answered.

The MASTER: The witness may answer subject to the objection.

A. Yes it had a small business of its own.

443. Do you know what was done with the stock representing that increased capitalization of the complainant company?

Objected to as incompetent and immaterial, irrelevant and not the best evidence.

A. I don't quite understand what you mean. The electric lighting plant—Interrupted.

The MASTER: No, the question has no reference to that. I will not allow the witness to go into that.

Mr. RITCHER: I made a proposition here yesterday with regard to this record and I made it under certain conditions, those conditions

being that I would select with Mr. Little's aid those protions
1630 of the minutes as we understood pertained to this case and that the master should then go over it and select such other portions as in his opinion pertained to the case, and then if the gentlemen saw fit to accept it well and good, but otherwise they would have to go at it in the regular way. Now, if the gentlemen are going to trench on the record I want to call attention to that proposition so whatever position I may take later will be understood.

The MASTER: Is it claimed by you that the minutes of the proceedings of the board of directors of complainant company show what was done with the increased capitalization of the company?

Mr. RITCHER: The witness has testified the stockholders authorized the acquisition of that property and the capitalization was increased in order to acquire that property.

The MASTER: It would not be competent to prove anything orally that can be established by the record. Mr. Tichenor, if you intend to offer this record, I think it fair to the master and better for the record that you offer it now before you pursue inquiries that may be fully answered by the record of it. It is difficult for the master to rule on what is competent or incompetent when he does not know what the record shows.

Mr. TICHENOR: All right, I am perfectly willing to accept that suggestion.

The MASTER: If there are matters pertaining to this inquiry not disclosed by the record, I will, after the record is in evidence, be able to pass on the objections made more intelligently.

Mr. RITCHER: Is the record called for now under the proposition I have made?

Mr. TICHENOR: I am calling for the record; I simply said to the master I would accept the suggestion he made. I understand that to be the matter submitted for our consideration at this time.

The MASTER: Yes, I think you ought to introduce the
1631 record under the stipulation made by counsel for complainant. I merely suggest you take that course now in order to enable the master to pass on these objections made to your last two questions which may be answered by the record itself.

Mr. TICHENOR: Do I understand the gentleman proposes to furnish us copies of such portions of the record as they think is competent?

Mr. RITCHER: No, I have fixed this record by fastening together the portions I deem immaterial and I propose to hand this book to the master and have him go over the portions covered up and have him indicate what portions he thinks should go in, if any, that I have covered up, and then cover up such portions as he deems immaterial and then you can offer the book as it is or have the portions you desire read into the record.

Mr. TICHENOR: So far as I am concerned I do not propose to put my hand on that book in any way, shape or form under the present circumstances. It has been argued here that I am endeavoring

to pry into the affairs of the company as to such things as do not in any way pertain to this case, and I propose to hold myself in a position hereafter where that question cannot possibly arise. So, so far as I am concerned, any matters that I am expected to see I will look at them from copies and not from the book itself.

The MASTER: The master will not direct copies to be made unless the matter is offered in evidence. I was in hopes counsel would agree as to such portions of the book as should go in evidence, so the master would not have to go over the book and determine whether there were other matters that should go in, but the master is ready to perform his part under the stipulation, and if I find any portions of the book that are material in my judgment that have not been produced by counsel for complainant, I will call attention to it.

1632 Mr. TICHENOR: Well, we will be ready to take that matter up after the master has performed the service he is to do in that connection and under the ruling of the master I do not think there is anything more to be done now.

Adjourned subject to the call of the special commissioner.

1632a COPY of EXHIBIT "20,"

The underscored figures being same as figures in red ink in the original.

OCTOBER, 1901.

1901.	Cor. make total.	C. P.	Carbonized total.	Yield total.	Retort in use.	No. of men.
Oct. 24	**343.9** 125.3 **488.9**	16.0	80236	4.29	41	17
" 25	257.7 **504.4**	15.0	102950	4.76	54	21
" 26	22.4 **336.0**	16.7	108320	4.86	55½	22
" 27	207.6 **441.9**	.....	108300	5.01	54	22
" 28	95.9 **314.9**	17.7 17.0	109600	4.69	55½	21
" 29	215.5 **396.5**	17.5	110000	4.82	55½	21
" 30	147.9 **440.8**	17.7	115225	4.52	57	21
" 31	121.6	15.3	115500	4.87	57½	21

1901.	Cor. make total.	C. P.	Carbonized total.	Yield total.	Retort in use.	No. of men.
	383.7					
Nov. 1	200.8	17.0	116450	5.02	58	21
	426.7					
" 2	161.9	16.2	120200	4.90	60	21
	396.2					
" 3	192.6	.....	119050	4.94	60	23
	391.5					
" 4	192.0	15.8	114700	5.00	56½	23
	394.8					
" 5	159.7	.....	112500	4.93	57½	23
	363.9					
" 6	162.0	17.5	102600	4.93	55	22
	398.5					
" 7	149.2	16.2	109150	5.02	55	21
	413.3					
" 8	155.5	15.0	112250	5.05	56½	22
	422.6	15.0				
" 9	131.3	17.0	112350	4.99	56	22
	662.4	16.5				
" 10	189.2	16.3	110450	4.99	55	22
	400.1					
" 11	135.2	17.8	108850	4.93	54½	22
	412.0					
" 12	127.1	. . . .	110850	4.86	56	22
	409.6	16.9				
" 13	151.2	17.5	112650	4.98	57	22
	425.9					
" 14	143.1	18.1	113000	5.04	57	22
	414.3					
" 15	159.6	17.4	114100	5.93	57	22
	353.4	16.9				
" 16	224.6	17.6	115680	5.00	57½	22
	412.2					
" 17	148.7	16.0	113650	4.94	56	22
	367.9	17.3				
" 18	165.8	16.9	113650	4.87	55½	22
	461.3	16.3				
" 19	156.6	16.7	119500	5.17	58½	22
	428.3	16.8				
" 20	193.4	17.5	120300	5.17	58½	22
	389.5					
" 21	247.0	16.3	125200	5.08	60½	22
" 22	**525.0**	16.6				
" 22	96.1	16.9	123150	5.04	60	23
	476.2	17.8				
" 23	135.6	16.7	121650	5.03	59½	23
1632c						
	349.4					
Nov. 24	268.3	17.1	118900	5.15	56	23
	467.6					
" 25	141.2	16.7	118550	5.12	57½	23
	451.0					
" 26	156.5	16.2	117400	5.18	57	22
	453.1					
" 27	168.3	17.6	115600	5.31	56½	22

November, 1901—Continued.

1901.	Cor. make total.	C. P.	Carbonized total.	Yield total.	Retort in use.	No. of men.
	406.6	15.6				
Nov. 28	169.1	15.4	114500	5.20	55½	22
	395.6	19.2				
" 29	158.7	16.4	106300	6.17	52½	22
	428.2	16.9				
" 30	110.5	18.9	106600	5.05	53	22
1632*d*	DECEMBER, 1901.					
	364.8					
Dec. 1	182.9	16.6	105450	5.19	53	22
	442.8	16.4				
" 2	134.1	16.1	110650	5.21	57½	22
	458.8	16.1				
" 3	142.1	16.0	118350	5.21	58	22
	427.4	16.9				
" 4	188.3	16.4	118600	5.19	57½	22
	430.2	16.5				
" 5	166.8	16.1	116550	5.12	57	22
	432.9					
" 6	162.2	17.1	116750	5.09	57	22
	393.6					
" 7	196.6	17.6	116600	5.06	57	22
	435.9	17.0				
" 8	159.5	17.0	117300	5.07	57	22
	444.6					
" 9	162.3	16.1	121200	5.01	58½	22
	437.1	15.2				
" 10	177.6	16.3	120650	5.09	58	22
	428.9	15.9				
" 11	179.3	16.5	117700	5.17	56½	22½
	369.7	16.9				
" 12	263.4	17.7	123000	5.15	58	22
	534.4					
" 13	52.3	15.8	117900	4.98	57	23
	387.5					
" 14	172.6	13.2	113150	4.95	56½	23
	482.7					
" 15	133.1	.....	119100	5.17	57	23
	426.0					
" 16	204.6	17.0	124700	5.06	59	23
	468.4					
" 17	212.9	16.4	132850	5.13	61½	23
	485.7					
" 18	180.1	16.9	133750	4.98	63	24
	467.1					
" 19	214.3	16.4	134100	5.08	63	24
	475.9					
" 20	208.5	16.0	133350	5.13	63	24
	555.0					
" 21	119.7	17.1	129650	5.20	60½	24
	365.3	17.6				
" 22	239.1	18.0	115450	5.23	56	24
	435.9	18.6				
" 23	95.4	18.0	106650	4.98	52	24
	441.2	19.1				
" 24	116.5	17.4	113550	4.91	55	24

December, 1901—Continued.

1901.	Cor. make total.	C. P.	Carbonized total.	Yield total.	Retort in use.	No. of men.
1632*e*	**441.0**					
Dec. 25	120.7	.....	113750	4.94	56½	24
	335.9	17.8				
" 26	270.7	16.5	117950	5.12	58	24
	431.0					
" 27	212.3	16.7	124500	5.17	60	24
	478.7	16.8				
" 28	117.4	16.7	117700	5.06	56	24
	330.6					
" 29	225.5	.....	117500	5.17	56	24
	402.4	16.4				
" 30	140.7	16.6	118250	5.10	55⅞	24
	454.7					
" 31	121.8	16.9	113500	5.08	55½	24
1632*f*	JANUARY, 1902.					
	403.1					
Jan. 1	167.2	.....	111200	5.13	43	24
	412.6	16.8				
" 2	142.7	16.7	110450	5.08	43½	24
	434.4					
" 3	134.2	16.4	111100	5.12	43½	24
	424.4	16.3				
" 4	147.7	17.1	111900	5.11	43⅜	24
	365.4					
" 5	216.1	17.2	116349	5.00	44	24
	388.8					
" 6	177.6	17.2	115678	4.90	53½	24
	388.4	18.0				
" 7	186.9	18.3	117500	4.90	54	24
	411.7	17.9				
" 8	141.4	17.7	105650	5.23	52	24
	392.4					
" 9	179.0	16.7	110450	5.17	54	24
	392.8					
" 10	160.1	17.3	105400	5.10	52½	24
	458.8					
" 11	111.2	17.8	112400	5.07	54	24
	369.0					
" 12	176.1	15.6	109400	5.00	43½	22
	423.2	16.0				
" 13	143.8	15.8	113900	5.02	51½	23
	372.3	17.6				
" 14	147.6	18.8	104000	5.00	47½	22
	395.4	17.7				
" 15	146.4	17.8	103000	5.01	49½	22
	352.6					
" 16	137.1	18.0	103950	5.00	49	22
	387.5	17.8				
" 17	137.0	17.2	107700	5.06	50	22
	418.1	16.3				
" 18	138.2	16.9	110400	5.04	52½	23
	337.0					
" 19	214.7	17.2	109900	5.02	51½	23

January, 1902—Continued.

1902.	Cor. make total.	C. P.	Carbonized total.	Yield total.	Retort in use.	No. of men.
	404.0	16.5				
Jan. 20	139.4	17.0	114850	4.73	54	24
	397.2	17.1				
" 21	155.3	17.2	114360	4.34	54	24
	361.5	16.0				
" 22	169.6	18.5	114200	4.83	54	24
	391.6	17.0				
" 23	**181.0**	17.6	113500	4.90	54	24
	412.3	16.8				
" 24	163.2	17.2	114850	5.01	54	24
1632*g*						
	453.3	16.0				
Jan. 25	114.1	16.4	113350	5.01	54	24
	333.5					
" 26	183.9	.....	114400	4.99	64	24
	595.9	16.0				
" 27	167.9	16.2	113850	4.95	54	24
	394.8	16.3				
" 28	184.3	17.2	113900	5.07	54	24
	443.9	16.8				
" 29	141.5	16.0	116400	5.02	54	24
	334.9	16.1				
" 30	172.3	17.4	116150	4.88	54	24
	390.8	17.4				
" 31	169.4	17.1	113900	4.92	54	24

FEBRUARY, 1902.

	463.0	16.7				
Feb. 1	136.6	16.7	116500	5.01	54	24
	396.1					
" 2	210.8	16.9	121200	5.00	54	24
	429.2					
" 3	170.7	15.1	120000	5.00	54	24
	430.1	14.5				
" 4	162.5	14.8	115000	5.00	54	24
	424.7	13.8				
" 5	168.4	16.5	118500	5.01	54	24
	398.7	18.3				
" 6	180.1	19.1	118100	4.98	54	24
	419.9					
" 7	162.4	17.1	116050	5.02	54	24
	421.3	16.5				
" 8	164.7	17.1	115100	5.09	54	24
1632*h*						
	387.9					
Feb. 9	195.3	16.3	116650	5.00	54	24
	434.4					
" 10	148.4	.....	116100	4.99	54	24
	448.8					
" 11	145.0	17.5	116050	5.15	54	24
	428.1					
" 12	156.3	19.1	115100	5.07	54	24
	418.0	17.0				
" 13	160.9	17.6	113650	5.09	53½	24

February, 1902—Contined.

1902.	Cor. make total.	C. P.	Carbonized total.	Yield total.	Retort in use.	No. of men.
	456.9					
Feb. 14	137.8	18.1	113050	5.28	62	24
	427.4					
" 15	153.8	15.4	113950	5.14	52½	24
	363.1					
" 16	157.6	16.2	106600	4.88	48	22
	401.9					
" 17	114.7	17.8	105800	4.88	48	22
	357.7					
" 18	149.8	17.3	105650	5.08	48	22
	367.4					
" 19	160.0	17.3	102600	5.13	48	22
	389.2					
" 20	124.0	17.4	101000	5.07	48	22
	373.4	17.2				
" 21	119.7	17.9	101800	4.84	48	22
	373.6	19.1				
" 22	127.2	18.6	102400	4.92	48	22
	367.2	17.9				
" 23	114.9	18.2	101800	4.90	48½	22
" 24	**378.1**	19.5	106300	4.77	50	22
	129.1					
" 25	**357.2**	19.1	99900	4.84	49½	22
	125.9					
" 26	**343.3**	19.9	99900	4.86	50	22
	142.1					
" 27	**313.3**	18.6	100800	4.82	49½	22
	170.9					
" 28	**376.0**	18.0	102300	4.48	50	22
	82.8					

1632i

MARCH, 1902.

	360.5					
Mar. 1	179.8	17.6	107900	5.00	54	24
	336.3					
" 2	128.5	18.7	112500	5.02	54	24
	383.4					
" 3	205.4	17.4	116300	5.13	54	24
	469.1					
" 4	104.4	17.2	116300	4.93	54	24
	362.9					
" 5	168.9	17.3	109800	4.84	53½	24
	357.0					
" 6	195.3	16.7	107700	5.13	64	24
	395.0					
" 7	153.1	17.5	106200	4.97	53½	24
	424.2					
" 8	80.5	16.4	100100	5.04	50½	24
	326.9					
" 9	152.9	17.4	96150	5.09	48	22
	328.8					
" 10	145.5	19.0	97600	4.86	48½	22
	244.9					
" 11	102.6	16.7	94900	4.72	47½	22

March, 1902—Continued.

1902.	Cor. make total.	C. P.	Carbonized total.	Yield total.	Retort in use.	No. of men.
	416.4					
Mar. 12	39.8	17.8	96100	4.74	48½	22
	286.0					
" 13	180.6	18.4	94800	4.92	48½	22
	330.4					
" 14	196.5	17.5	97100	4.48	49½	22
	342.5					
" 15	162.0	17.5	104150	4.84	51	22
	310.0					
" 16	213.5	16.9	102500	5.10	50	22
	373.1					
" 17	162.6	16.8	106100	5.05	51	22
	377.3					
" 18	165.5	17.6	106850	5.00	51	22
	377.1					
" 19	145.9	17.9	104600	5.00	51	22
	374.1					
" 20	142.4	18.2	103300	5.00	49½	21
	361.6					
" 21	166.7	18.6	108000	4.89	51	21
	374.7					
" 22	167.7	18.1	110700	4.90	51	20
	337.2					
" 23	168.5	16.8	102800	4.92	47	20
	309.6					
" 24	96.3	....	84300	4.76	40	19
1632½						
	307.3					
Mar. 25	130.7	17.4	91250	4.60	45	18
" 26	69.4	.....	91150	4.77	48	19
	320.8					
" 27	151.9	16.4	97000	4.67	48	19
	340.0					
" 28	150.4	.....	101100	4.65	49½	20
	363.8					
" 29	131.9	17.3	98200	5.04	49.5	21
	327.3					
" 30	149.7	.....	97100	4.91	48.5	20
	344.1					
" 31	143.4	17.2	98200	4.96	48	20

April, 1902.

	351.9					
Apr. 1	164.7	16.8	104200	4.96	52	21
	321.4					
" 2	199.4	17.6	102000	5.11	50½	20
	320.1					
" 3	122.0	18.8	87600	5.05	41.5	19
	318.5					
" 4	104.6	17.2	87800	4.82	45⅝	20
	397.2					
" 5	31.9	.....	86300	4.97	45	18
	276.1					
" 6	147.1	.....	84500	5.01	45	17

April, 1902—Continued.

1902.	Cor. make total.	C. P.	Carbonized total.	Yield total.	Retort in use.	No. of men.
	304.3					
Apr. 7	130.1	17.2	86900	5.00	45	18
	269.6					
" 8	174.2	16.5	88800	5.00	45	19
	317.0					
" 9	131.3	.....	90000	4.98	45	18
	306.0					
" 10	166.6	17.7	94500	5.00	46½	18
1632	**330.6**					
Apr. 11	173.1	16.9	103000	4.89	50½	20
	337.3					
" 12	175.8	17.6	104400	4.91	52½	20
	356.9					
" 13	117.8	.....	95300	4.99	47	18
	353.5					
" 14	105.1	17.8	95600	4.80	48	18
	316.8					
" 15	148.4	17.1	94900	4.90	46⅞	18
	312.6					
" 16	136.6	16.7	94000	4.78	46⅞	18
	301.7					
" 17	168.6	17.7	95200	4.94	47⅞	18
	338.4					
" 18	142.4	18.3	98200	4.90	46½	18
	375.0					
" 19	74.9	17.6	91700	4.93	45	20
	262.8					
" 20	207.1	16.8	93100	5.04	45	20
	319.6					
" 21	112.0	17.6	88100	4.90	41⅞	18
	329.6					
" 22	120.3	18.1	91800	4.90	44½	18
	312.9					
" 23	141.8	17.8	92000	4.94	46	18
	314.9					
" 24	135.9	16.9	91700	4.92	45	18
	312.0					
" 25	123.4	18.2	90200	4.83	44½	18
	305.0					
" 26	161.0	17.6	96100	4.85	43	18
	329.7					
" 27	102.9	.....	88500	4.89	44½	18
	311.5					
" 28	126.4	.....	90200	4.85	45	18
	310.3					
" 29	131.0	17.5	90100	4.90	44	18
	306.6					
" 30	123.2	17.7	87700	4.90	44	18

MAY, 1902.

1902.	Cor. make total.	C. P.	Carbonized total.	Yield total.	Retort in use.	No. of men.
	293.0					
May 1	137.4	....	88500	4.86	44	18
	293.9					
" 2	140.5	.....	89000	4.88	44½	18
	309.5					
" 3	122.8	.....	89100	4.55	45	18
	250.9					
" 4	176.0	.....	89300	4.78	44	18
	328.6					
" 5	110.2	17.8	88700	4.94	45	18

1632*m* COPY OF EXHIBIT "20."

OCTOBER.

	Coke.				Tar.	Ammonia.
1901.	Made.	Pr. ct.	Sold.	Stock.	Made.	Made.
Oct. 24	61449	31.4	.....	19083	....	.....
" 25	79102	27.0	.....	19083	884	.....
" 26	83797	21.4	56400	19957	648	38.5
" 27	83780	22.1	4500	20615	707	96.25
" 28	84837	22.2	.....	21322	600	.....
" 29	85058	21.5	45000	17469	1497	92.4
" 30	87470	22.3	3900	18966	706	.....
" 31	89107	23.2	88600	19672	535	.....

Breeze ..... Total from Oct. 24th 9800
Screenings ..... " " " " ..... 26700.

NOVEMBER.

Nov. 1	90187	20.7	800	15844	685	107.8
" 2	92839	22.4	48500	16492	707	102.0
" 3	91900	22.8	.....	17199	707	107.8
" 4	88718	21.5	10385	17906	942	111.7
" 5	86721	23.7	74870	18848	471	128.0
" 6	83902	22.3	25350	19319	707	154.0
" 7	84216	23.1	71200	20026	471	133
" 8	86523	23.8	119150	20497	766	107.8
1632*n*						
Nov. 9	86832	22.0	16450	21263	766	180.2
" 10	85192	23.3	103600	22029	471	134.8
" 11	84058	22.5	71000	22500	1060	175.4
" 12	85600	22.6	78070	23560	707	130.7
" 13	87064	22.0	116000	24267	.....	86.5
" 14	87200	23.0	117800	22853	809	177.1
" 15	88169	22.1	17075	22029	698	194.8
" 16	89543	20.9	18150	21911	707	123.2
" 17	87382	24.8	108900	22618	706	123.2
" 18	87723	22.9	14825	23324	472	164.0

November—Continued.

1902.	Coke. Made.	Pr. ct.	Sold.	Tar. Stock.	Ammonia. Made.	Made.
Nov. 19	92216	23.0	17700	23796	589	164.0
" 20	92794	23.3	17525	24385	235	275.5
" 21	96816	21.7	110800	24620	1373	275.6
" 22	95162	22.1	67950	20968	707	299.8
" 23	94025	22.8	5200	21675	1414	299.0
" 24	91799	22.7	44800	23089	707	144.0
" 25	91684	30.9	66750	23796	353	240.0
" 26	90644	23.4	67075	24149	353	144.0
" 27	89160	23.4	8550	24502	236	96.0
" 28	85590	21.3	113150	24738	707	192.0
" 29	82096	22.5	72200	25445	235	144.0
" 30	82465	21.4	17743	25680	754	240.0

Breeze ..... Total for November..... 85600
Screenings ..... " " " 233800

1632*o* DECEMBER.

Dec. 1	81465	22.3	38300	25309	943	144.0
" 2	85440	22.6	13975	26152	817	192.0
" 3	89127	22.2	19600	26152	219	144.0
" 4	91583	22.6	59800	24738	707	192.0
" 5	90005	22.5	5075	24220	.....	.....
" 6	90202	22.2	128250	22146	472	.....
" 7	89965	23.1	550	22618	690	.....
" 8	90622	22.5	.....	21675	707	96
" 9	93562	22.8	68015	22382	1107	240.
" 10	93162	22.6	17400	22264	1343	144
" 11	90949	22.1	18550	22382	....	192.
" 12	95181	21.2	58050	19555	690	144.0
" 13	91179	21.6	14400	18612	464	167.0
" 14	87856	24.7	16225	18259	....	180.0
" 15	91784	23.9	93300	18259	1178	180.0
" 16	96081	24.0	22000	19437	544	192.0
" 17	102544	22.8	79350	19202	544	264.0
" 18	103197	23.1	122725	17670	544	.....
" 19	103364	23.8	95600	20026	707	.....
" 20	102631	24.7	52925	20733	699	168
" 21	100160	22.3	20600	20615	752	240
" 22	89113	23.0	95200	16492	236	240
" 23	82247	23.4	26425	16728	.....	240
1632*p*						
Dec. 24	87633	22.9	53275	16728	628	192.0
" 25	87757	23.2	129100	16728	628	119.0
" 26	90838	24.3	90365	18612	628	73.0
" 27	96078	22.9	112375	19319	707	216.0
" 28	90880	22.6	119025	24031	.....	72.0
" 29	90687	22.9	26858	26858	707	.....
" 30	91288	22.7	166150	27565	383	143.0
" 31	87651	22.5	110125	27918	118	336.0

Breeze..... Total for December..... 69470
Screenings..... " " " ..... 510600.

JANUARY.

1902.	Coke. Made.	Pr. ct.	Sold.	Tar. Stock.	Ammonia. Made.	Made.
Jan. 1	86265	19.6	.....	21975	605	144
" 2	85432	21.5	121200	22580	616	144
" 3	85893	21.8	52825	23196	605	158
		35.0				
" 4	86429	22.4	68525	18776	616	130
		34.4				
" 5	90043	22.2	.....	19392	696	96.0
		28.6				
" 6	89457	21.3	56350	20088	638	192.0
1632q						
		28.2				
Jan. 7	85867	22.0	25625	20676	616	144.0
" 8	81882	21.7	163175	21292	550	144.0
" 9	85314	22.4	46900	21842	605	.....
" 10	83792	23.3	104275	22447	594	.....
" 11	86825	23.7	12550	28041	672	.....
" 12	84762	21.5	48100	23713	600	336.0
" 13	87527	20.0	91025	19288	626	336.0
" 14	80419	21.7	66900	19914	624	192.0
" 15	83437	22.3	66850	20538	648	191.0
" 16	80341	22.0	68975	21186	624	144.0
" 17	83143	22.7	99900	21810	810	120.0
" 18	85304	22.2	65050	22620	600	72.0
" 19	84876	22.8	.....	23220	600	240.0
" 20	88797	21.8	89925	23820	.....	182.0
" 21	88308	21.9	9200	18795	200	146.0
" 22	88160	22.8	22500	18995	798	94.0
" 23	89169	22.7	117000	19793	870	48.0
" 24	88704	22.6	103950	20663	855	120.0
" 25	87595	22.2	106725	16483	900	120.0
" 26	88338	22.6	.....	17383	855	216.0
" 27	87983	22.2	200900	18238	855	216.0
" 28	87865	23.2	51900	19093	817	288.0
" 29	89776	23.4	52675	19093	870	288.0
" 30	89698	22.5	118275	19963	298	.....
" 31	87760	24.0	249825	20261	912	.....

1632r Screenings..... Total for January..... 334400.
Breeze..... " " " ..... 180100.

FEBRUARY.

Feb. 1	91960	24.8	68600	21173	840	144.0
" 2	89460	23.1	178900	22013	638	.....
" 3	90093	24.1	68060	22651	660	.....
" 4	91055	23.9	1100	23251	720	144.0
" 5	91161	25.0	275750	23971	1003	96.0
" 6	89090	22.9	154400	24974	870	192.0
" 7	89410	24.1	176400	25844	870	48.0
" 8	88726	23.7	56425	21689	660	388.
" 9	89981	23.3	222150	22349	696	144.0
" 10	89632	22.7	228975	23045	600	.....
" 11	88776	22.9	84050	23645	600	95
" 12	88905	22.4	179375	24245	600	196.
" 13	87526	24.2	60750	19820	600	192.
" 14	87062	24.3	307400	20420	600	192.

February—Continued.

1902.	Coke. Made.	Pr. ct.	Sold.	Tar. Stock.	Made.	Ammonia. Made.
Feb. 15	88022	22.4	82275	21020	800	96
" 16	82850	22.3	223800	15570	800	192.
" 17	81765	23.8	77175	16370	1225	120.
" 18	81575	22.6	229775	16370	600	144
" 19	79354	22.8	18425	16970	700	191.0
1632s						
Feb. 20	77922	23.2	102475	17670	500	216.0
" 21	78610	22.6	241125	18170	600	144.0
" 22	78644	22.0	204400	13745	600	169.0
" 23	78942	23.7	41200	14345	600	168.0
" 24	82165	21.9	138300	14945	600	288.0
" 25	77502	21.1	180275	15545	500	144.0
" 26	77026	23.6	207000	16045	500	96.0
" 27	77697	21.8	136275	16545	500	240.0
" 28	78935	23.1	119600	17045	500	240.0

Screenings.....Total for February..... 315200.
Breeze..... " " " ..... 209000.

MARCH.

Mar. 1	83275	22.9	138200	17545	500	.....
" 2	86742	23.6	.....	18845	500	.....
" 3	89043	22.4	287750	18545	500	.....
" 4	89848	22.3	225825	12387	500	.....
" 5	84896	21.8	359175	11254	500	.....
" 6	83201	22.3	259250	10121	500	168.0
" 7	82010	22.6	286500	10621	800	168.0
1632f						
Mar. 8	77212	23.3	229800	9788	800	120.0
" 9	71469	22.3	166600	9771	800	144.0
" 10	68320	25.0	195200	10571	800	120.0
" 11	66202	23.8	62100	10564	800	144.0
" 12	62565	26.8	155600	11354	800	143.0
" 13	66850	27.1	64625	12154	800	144.0
" 14	34370	30.8	127975	12954	800	96.0
" 15	68273	24.9	156775	13754	800	144.0
" 16	67810	28.5	.....	14554	800	192.0
" 17	68623	27.4	99200	15354	600	144.0
" 18	68970	26.9	51475	15954	600	144.0
" 19	68420	27.3	72075	16554	500	144.0
" 20	66800	28.9	78750	17054	446	168.0
" 21	69565	28.0	4200	17500	500	216.0
" 22	70142	26.6	69025	18000	500	144.0
" 23	65260	27.5	.....	18500	500	168.0
" 24	54730	25.0	75725	19000	500	120.0
" 25	57837	20.9	66350	19500	400	168.0
" 26	60087	24.1	6425	19900	500	144.0
" 27	65550	22.1	89500	20400	600	167.0
" 28	61590	25.9	57275	21000	400	144.0
1632u						
Mar. 29	57660	26.3	62800	21400	500	144.0
" 30	60510	28.5	1803700	21900	500	96.0
" 31	60900	24.9	96500	22400	600	144.0

Breeze.....Total for March..... 144000.
Screenings..... " " " ..... 209500.

APRIL.

1902.	Coke. Made.	Pr. ct.	Sold.	Tar. Stock.	Ammonia. Made.	Made.
Apr. 1	64050	25.9	152750	23000	500	104.0
" 2	62010	25.6	14725	23500	500	104.0
" 3	51810	25.3	25975	24000	817	104.0
" 4	55880	12.6	.....	24500	500	168.0
" 5	52305	7.7	91325	24500	500	240.0
" 6	51159	6.9	.....	25000	500	144.0
" 7	50252	6.7	6875	25500	500	192.0
" 8	52602	4.9	.....	21550	450	144.0
" 9	53383	5.8	56650	22000	500	144.0
" 10	56000	8.5	.....	22500	500	192.0
" 11	62315	6.3	113275	18550	550	144.0
" 12	63070	5.2	111100	19100	500	143.0
" 13	57605	5.65	.....	19600	600	145.0
" 14	57814	6.2	44400	20200	600	239.0
" 15	55480	5.5	17075	20800	650	192.0
" 16	56435	6.2	65575	17000	1525	96.0
" 17	57591	6.5	.....	13500	850	96.0
" 18	57229	6.3	51800	14300	700	96.0
" 19	56178	6.1	36300	15000	650	95.0
" 20	55609	4.3	.....	15650	700	121.0
" 21	51036	3.2	195200	16350	650	144.0
" 22	54451	3.5	.....	17000	700	144.0
" 23	54463	3.3	67800	17700	800	144.0
" 24	54300	2.3	18925	18500	1000	144.0

1632v Vol. 6, Schedule "B." Israel C. Pinkney, Special Master.

Filed Jun- 3, 1903. Marshall E. Sampsell, Clerk.

1633 UNITED STATES OF AMERICA, } ss:
State of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY } In Chancery. For Injunction
vs. } and Relief. Volume 6.
CITY OF PEORIA. }

Testimony taken in the above entitled cause for and on behalf of the defendant herein, before Judge I. C. Pinkney, special commissioner, at Peoria, Illinois, June 26, 27, 28, July 21, 22, August 18, 1902; at Chicago, Ill., August 19, 1902, and at Syracuse, N. Y., August 22, 1902, and at Peoria, Illinois, August 30, 1902, as set forth in the following pages.

Mr. W. T. Irwin, Mr. R. C. Ritcher, Mr. W. T. Abbott, appearing for the complainant.

Mr. Henry Mansfield and Mr. F. H. Tichenor, appearing for defendant.

Index to Witnesses.

Names.	Direct.	Cross.	Re-direct.	Re-cross.
Little, F. W. (re-called).....	1634			
Bicknell, Henry W.....	1680	1705	1708	
" " " (").....	1714	1716		
Barker, Geo. W.....	1719			
Little, F. W. (").....	1733	1970	1981	
Egner, Frederick.....	1738	1783	1846	
Lawler, B. M.....	1852			
Kohl, Adam.....	1854			
Gorman, T. N. (").....	1855			
Wall, John H.....	1857			
Bicknell, H. W. (").....	1859			
Planck, Morris G.....	1862			
Prochazka, Milo..	1865			
Gorman, T. N. (").....	1867	1869	1870	
Walton, Lyman A.....	1870			
Walsh, John R.....	1877			
Littlehales, Thos.....	1878	1909	1929	1932
1633½ Madigan, John.....	1960			
Cunningham, Frank O.....	1961			
Durkin, Joseph P.....	1963			
Cremer, Bernard.....	1964			
Planck, Morris G. (re-called).....	1967			

Index to Documents.

Affidavit of Henry Mansfield with reference to having documents produced by old company..... Page 1709.
Order of court with reference to same..... " 1718
Special parts of Exhibit "20" offered in evidence..... " 1725
Exhibit "33" labor material etc. furnished old company.. " 1737
" "32" contract between complainant & old company inserted immediately following..... " 1737
Exhibits "Egner Figure- 1 and 2"..... " 1850
Exhibits "34, 35, 36," proceedings of city council, and " "22," copy of county records with reference to increase of stock of complainant company.. " 1851
Copy of gas bill (Lawler)..... " 1854
Copy of contract between old company & Planck Bros... " 1865
" " " " " " Grant hotel... " 1866
Copy of secretary's book..... Pages 1874–1934–5.
Letter to complainant company from old company asking for proposition to furnish old company gas..... " 1971
Notice terminating above contract..... " 1972
Statement as to labor and materials furnished old company in addition to similar statements Exhibit "33".. " 1973

Original of affidavit of Henry Mansfield as appears on page 1709 attached to end of original volume.

PEORIA, ILL.,

1634 THURSDAY, *June 26th*, 1902—10 a. m.

Parties met pursuant to call of special master.

Present: Judge I. C. Pinckney, special commissioner. Messrs W. T. Irwin, E. C. Ritcher and W. T. Abbott, appearing for complainant. Messrs. Henry Mansfield and F. H. Tichenor, appearing for defendant.

FRANCIS W. LITTLE, recalled on behalf of defendant, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. In a former part of your examination, when last upon the witness stand, you made some statements with respect to inspectors' reports pertaining to whether or not premises occupied by your company for gas service, were also occupied by the old company. I will ask you to state whether or not, since that examination, you have informed yourself upon that question to the extent of now being able to state whether or not your records will show what premises were being served by the old company at the time you began furnishing gas in 1900?

Objected to by complainant as immaterial.

By the MASTER: The witness may answer subject to the objection.

A. No, I haven't thought to look at those records at all since I was on the stand before.

2. Will you make that examination as early as reasonably practicable, and be prepared to testify upon that question later?

A. Yes sir.

3. At the time the various witnesses called by complainant company were investigating your records, in connection with
1635 yourself and Mr. Robb—if in fact you did participate with them in such examination—you may state whether or not they were given, in every instance, the exact lengths of services, and mains, and whether or not their testimony was in harmony with the figures which you gave them pertaining to those matters?

Objected to by complainant as incompetent and immaterial.

A. I have no recollection now of having been present when any of the witnesses who testified in the case examined the books and records. I have only a recollection concerning the instructions I gave Mr. Robb in connection with that matter.

4. Did your records at that time show the exact lengths of the piping referred to that had been installed by your company?

A. Yes sir.

5. In instructing Mr. Robb upon those questions, did you direct him to give only the exact mileage of such piping as had actually been installed by your company?

Objected to by complainant as incompetent.

By the MASTER: I think he ought to state what instructions he gave; it's objectionable as to form.

6. What instructions did you give Mr. Robb upon those questions?

A. I told him to show any of those gentlemen, and all of them, our plat books and records showing the number of miles and feet of main pipes which had been laid up to the various dates, and also the number of miles and feet of service pipes, and to give them the original records, which included the original plats of the mains and the original cards on which the location and lengths and sizes of the various service pipes had been entered, together with the dates when the service pipes were laid.

By the MASTER: This examination is directed to the in
1636 formation he gave to these experts who testified as to the value of the plant

By Mr. TICHENOR: Yes sir, as I understood it.

7. Have you made any examination for the purpose of ascertaining whether or not those experts did use the figures which your records contained?

Objected to by complainant, as incompetent, irrelevant and immaterial.

By the MASTER: I think it appears in the record that they did; he may answer.

A. I have not made any personal examination of that fact.

8. Those records, as I understand the testimony, showed all the piping that had been put in—both that in actual use as well as that not in use: Is that the fact?

A. Yes sir.

9. Had you any services in use on the first day of September, 1900, that were not put in by your company?

A. No, not that I have any knowledge of; I think not.

10. Have you ever had any such services in use?

A. I think not.

11. Then the figures which your records contained were only with reference to such as your company had actually put in, and those, and those alone, were the only services that you had in use?

A. Yes.

12. Or ever have had in use?

A. The only ones that I know of. I think I testified, either on cross examination or in the early part of the hearing, that in a case on Adams street, for some distance—I have forgotten the exact distance—some services of the Peoria Gas Light and Coke Company were attached to our mains, and we charged them with the
1637 gas which went through those services; but aside from that, I think there is no such service connected with our mains, excepting those which we laid ourselves.

13. State whether or not any of your mains were laid in streets or alleys paralleling the old company's mains.

A. Yes.

Objected to by complainant, as immaterial, and as having been gone over.

A. We have mains on the same streets as theirs.

14. Can you state from recollection about what mileage of mains you had that were laid in that manner?

Objected to by complainant as immaterial.

A. I cannot state it from recollection, no; in fact, I don't know what streets the Peoria Gas Light and Coke Co. have mains on where we also have mains; I am familiar with only our own system.

15. Have you at any time been furnishing gas to consumers along streets where your pipes were laid in the same streets as the pipes of the old company?

Objected to by complainant as immaterial and irrelevant.
Objection overruled.

A. Yes sir.

16. Can you state how many consumers you have that occupy that position?

Objected to as immaterial and irrelevant. Objection overruled.

A. What do you mean? How many consumers we have on streets where the old company has mains?

17. Yes.

A. No, I can't state that.

18. Have you any records that will show the consumers that you have now, or have had at any time, on any such streets or
1638 alleys, that were formerly served by the old company?

Objected to by complainant as immaterial and irrelevant.

A. I don't think we have any records that will show that with any considerable degree of accuracy, unless it may be that the inspector's reports, which I referred to in my last examination, show where the people have been using gas from some other company.

19. Do you know who owned the service pipes and meter connections used by the Peoria Gas Light and Coke Co. at the time you began to serve gas in Peoria?

Objected to by complainant as incompetent, immaterial, irrelevant and not the best evidence.

By the MASTER: You may answer from your personal knowledge.

A. I have no personal knowledge on the subject.

20. Do you know to whom they belonged?

A. No, I have no knowledge on the subject at all.

21. Do you know whether or not the old company, prior to the time you came into this territory to furnish gas, had required its consumers to furnish their own services and meter connections?

Objected to by complainant as incompetent and immaterial.

A. My understanding at the time we came here, was that the old company charged for services and for meter connections; under what sort of an arrangement that charge was made, I don't know; I don't know who the title and ownership of the services and meter connections rested in.

22. Have you ever known since?

A. No sir, I have not; I have no knowledge whatever as to the ownership of those services and meter connections.

23. I will ask you how many, if any, of those service pipes and meter connections were actually connected with your own
1639 mains and subsequently used for furnishing gas to former customers of the Peoria Gas Light and Coke Co.?

Objected to as immaterial. Objection overruled.

A. I don't know.

24. Do you know that you did *any*?

A. Yes, I think we furnished some.

25. State whether or not that is true with reference to all old com-

pany's consumers on streets where your mains paralleled theirs, so far as you subsequently obtained their customers?

Objected to by complainant as incompetent and immaterial.
Objection overruled.

A. I don't understand your question.

26. That you connected those service pipes with your own mains and used them?

A. You mean whether we connected all of the service pipes where the old company had customers?

27. No, I mean so far as you subsequently obtained their customers, along those lines?

A. Whether the new company used the service pipes of the old company whenever they got the old company's customers?

28. Exactly?

A. I don't think we ever used a service pipe of the old Co., or which had been put in by the old company—I don't know of an instance, and don't think there is an instance, where we connected up a consumer who had previously been served by the old company, without ourselves laying new service and furnishing new meter connections and new meters with the exception of some cases which I have mentioned, on South Adams street.

29. I'll ask you to state if it is not a fact, that at #203 1640 Main street, in this city, you cut off the old company's connection and connected the meter with your own pipes and have since been serving gas to that building?

A. I have no information on that subject; I could tell by looking up the record.

30. Will you examine your records and ascertain?

A. Yes.

31. I'll ask you to state if along those streets and alleys where your pipe was laid parallel to the old company's pipes, you did not regularly cut off their services and connect them with your mains, so far as you subsequently obtained their customers, using not only the consumers' services, but also their meter connections, which they themselves had paid for to the old company?

A. It was not a regular practice, and I do not think it was done in any instance; I have no recollection of any instance of that being done—any knowledge of it.

32. Then I understand you to testify, do I, that along all of those lines that your line has been made, you put in new service connections, and connected them up with your own mains, notwithstanding the consumer already had his own services in? Is that a fact?

Objected to by complainant as incompetent and immaterial.
Objection overruled.

A. That is substantially the fact.

33. Have you ever known of your company's cutting off any of

the consumers' services from the old company's mains, either during the process of construction by your company, or subsequently?

Objected to by complainant as immaterial and incompetent.

A. I have not at this time any recollection of that; I don't
1641 recall any such cases.

34. Who would have charge, or who did have charge, of work of that character?

Objected to by complainant, as immaterial and incompetent.

A. Mr. Robb.

35. To what extent, if at all, did your company use the consumers' meter connections in those places where the old company had formerly been serving gas?

Objected to as incompetent and immaterial. Objection overruled.

A. I have no knowledge of any of them being used.

36. Have you ever made any examination of premises which were formerly served by the old company and later by your company, for the purpose of ascertaining the facts in regard to such connections?

Objected to by complainant as incompetent and immaterial.

A. No, I have not.

37. Permit me to refresh your recollection and ask you if it is not true, that during the time of your construction and while you were securing consumers, special efforts were not made to ascertain upon what streets and in what locations the old company's services and meter connections could be used by your company so far as you succeeded in getting their former customers?

Objected to by complainant as incompetent and immaterial.

A. We may have made investigation of that sort, but my recollection is that we found, after examining the question only to a limited extent, that the majority of the old services were not suitable for our use—were too small, and laid in such a manner as not to be satisfactory to us, and I have no recollection now that we ever used any of their services, or connected any of their services to our mains; if there were any such cases I have forgotten them.

1642 38. What knowledge, if any, have you regarding the efficiency of the service system of the old company?—I am speaking, now, with reference to the services in the consumers' buildings.

A. The only knowledge I have is from the examination of a few services which I saw in the ditches when we opened our trenches and exposed their services. When I happened to be along, in those cases, I always investigated the service—examined its size and general condition.

39. And those pipes to which you refer, were services that were then in actual use?

A. I have no knowledge about that. Whenever I saw a pipe and saw it was a gas service pipe, I looked at it; but I did not go into it to see if it was in use, or make any examination on that score?

40. It is true, is it not, that along the routes where you parallel the old company's pipes, the old company have furnished a large amount of gas?

Objected to by complainant as immaterial.

A. I haven't the least information on that subject.

41. Do you know how much gas the old company was furnishing at the time you began to serve in Peoria?

Objected to by complainant as immaterial.

A. I cannot answer that, any more fully than I did on my last examination. The only information I had was the published information that was open to everybody.

42. And you said that source was reliable, did you not?

A. Yes, generally considered so.

43. In those premises formerly occupied by the old company, and later occupied by your company, did you also put in new meter connections?

A. Yes sir.

1643 44. And those and the new services were all charged as part of your construction account, were they?

A. The services were charged to the service account and the meter connections to the proper account.

45. Of what advantage would it be to a customer to have two full sets of meter connections in his premises?

Objected to as immaterial.

A. When we first began to investigate this question of meter connections, we found that the old gas Co. claimed the ownership in some instances, at least, of their meter connections; we found their meter connections were made differently from ours, and there was no advantage whatever in using their connections, so we furnished our own, concerning which there was no question as to the title or efficiency or sufficiency of them.

46. How did your meter connections compare in cost with theirs?

Objected to by complainant as immaterial and irrelevant. Objection overruled.

By the MASTER: If he knows.

A. I don't know.

47. Could you tell from the looks or appearance?

A. No, not without a personal examination; it's a question of the

abor that is put on it, as well as the material in it, and the market rice of the material.

48. You could tell pretty nearly, from your experience in the gas usiness, what the labor would cost?

A. Yes, I could give you an approximate idea of the relative alue of the two sets. My impression is ours cost a few cents each nore than theirs.

By the MASTER: Are you referring now to the meter connections at the service pipes?

1644 By Mr. TICHENOR: Yes, the meter connections at the service pipes.

A. We mean by that the lead connection from the service pipe p to the meter and from the meter to the riser.

49. Yes, those are the pipes to which I refer. What is the regular ize of those meter connections placed by your company?

Objected to by complainant as immaterial.

A. The most frequent size was an inch and a quarter.

50. What are the other sizes?

A. They range from an inch to two inches.

51. Upon what is that dependent?

A. Upon the size of the meter and the size of the service and the size of the house riser and also the length of the meter connection.

52. You have been using a different meter from those used by the Peoria Gas Light and Coke Co.?

A. I presume ours are manufactured by a different concern but they are substantially the same meter.

53. And they operate in exactly the same manner, do they not, so far as pertains to the measurement of gas?

A. Yes, all dry meters are very much alike; the principle of operation is the same.

54. How does the size of the meter connection compare with the size of the services?

A. They are usually of the same size.

55. What is the reason for varying, if it is done?

A. The meter is set with reference to the purpose for which gas is to be used, and the probable quantity of gas; that determines the size of the meter and the size of the meter determines the

1645 size of the meter connection; we have a standard coupling and fittings which are used, and it may be a relatively small meter will be placed in a house where a large service pipe has been installed for some reason; in that event there would be a reducer from the service pipe to the meter connection.

56. But the reverse would never be practiced?

A. No, it would reduce the pressure of your gas if you did that.

57. Has your company continued to put in services since September first, 1900?

Objected to by complainant as immaterial.

A. Yes.

58. State whether or not you have put in any new services in the territory occupied by the old company and to consumers already furnished by that company?

Objected to by complainant as immaterial. Objection overruled.

A. Yes sir.

59. Have there been a considerable number of such services installed during the period mentioned?

Objected to by complainant as immaterial.

A. Yes sir.

60. Who has paid for those services?

A. They have been furnished by our company.

61. Who has actually paid for the installation of all such services?

A. Our company has; we haven't charged anybody for them except in a few instances, where we have made arrangements by which we charged the consumer with the cost of the services and then given him free gas up to the amount of the service.

1646 62. In how many instances has that been done?

Objected to by complainant as immaterial.

A. I cannot tell you how many.

63. What was the purpose of that?

Objected to by complainant as immaterial.

A. That's a custom we have had for some time in cases where the cost of the service is excessive; in other words, our rule has been to give a free service up to 60 feet, and where the service is a long one, or requires the opening of a paved street, and particularly an asphalt street, we want to be assured that we are going to get an income out of it sufficient to warrant the investment.

By the MASTER: What do you mean by 60 feet?

A. Sixty feet from the curb line, up to the location of the meter.

64. For how long a period of time has that been the practice of your company?

A. It's been the practice here since about the time we commenced business; we have always had some arrangement where there was an excessively long service.

65. And you made charges of that character when the services were originally put in?

A. Not when they were originally put in. When we had a large force of them at work, we could put the services in more cheaply, although in a number of instances we declined to put in services where we thought it was excessive.

66. And you exercised judgment upon that question, didn't you

A. Yes.

67. And your judgment was final?

A. Yes.

68. In those cases to which you refer, have you charged
1647 the entire cost of such installatien to the customer, or only part of it?

A. Only a part of it; each case has been settled on its own merits.

69. And you settled it in your own way, did you?

A. Yes sir.

70. What amount, up to the present time, has your company collected from consumers, for services put in in that way?

Objected to by complainant as immaterial.

A. It's a very small amount, but I cannot state the amount from recollection.

71. Have there been no cases except those to which you have referred, where your company has compelled the consumer in the first instance to stand the expense of the installation of the services?

A. I don't think of any.

72. What is the fact? Are there any or are there not?

Objected to by complainant as immaterial.

A. Well, I don't think of any; I can't tell you that there are, or are not; I have no recollection of any.

73. In what manner are the accounts of the transactions carried?

A. The services of that sort are charged to service sales, the cost of installing them; a bill is made for that, which is carried into accounts receivable, and accounts receivable is credited when the bill is paid.

74. And then credit is given when the whole amount is paid?

A. When the final amount is paid.

By the MASTER: As I understand you, this expense of these connections put in in that way, is paid by the consumer of gas, in the gas bills?

A. No, he pays his bill in the beginning, and his gas bills
1648 are allowed to accumulate until they reach the amount which they have paid, and then they are wiped off and charged to profit and loss.

75. In other words, when the gas bills equal in amount the cost of this service, the gas bills are receipted?

A. Yes, the proportion, whatever it may be.

76. In the meantime, the money so paid in is in possession of the complainant company in every instance?

A. Yes; that is, if it's been collected; it depends on the credit of the individual; we do not always insist on payment in advance; it's paid in in the ordinary course of business.

77. Do your records show how many cases there are of that kind?

A. Yes.

78. Will you make an examination and report at a later date when called upon to do so?

A. Yes sir.

79. I would like to have all the items, and the locations of all of those cases?

A. All right, sir.

80. In how many cases, if any, has your company compelled the consumer in the first instance to stand the whole expense of installation?

Objected to by the complainant.

A. We have never, to my knowledge, charged anybody for immediate connection, and I have no recollection or knowledge of any cases where the consumer has been required to stand the entire cost of the services, under any other than some such an arrangement as I have spoken of.

81. Then there have been cases, have there, where the entire cost of the services in the first instance has been charged to the
1649 consumer?

A. There possibly have been such cases, with an agreement to rebate the entire cost in the use of gas.

82. And those cases are determined by you, are they?

A. Yes sir.

83. And it is under those circumstances that the service will be installed, and under no other?

A. No, not necessarily.

84. Under what circumstances would you still install the service?

A. The rule is, as I have said, to make no charge for the service; but where there is some special reason, because of the great expense of putting the service in, an arrangement of that sort is made, which is generally under my supervision, but in case of my absence, I presume there have been cases where Mr. Robb has exercised his judgment. I have no recollection now of any such case, but I presume there have been such cases.

85. State whether or not there have been cases of the character to which you have referred, where the prospective consumers have refused to stand the expense of placing such services?

A. I don't know of any. Those matters do not come to me originally, and I have no recollection of any such cases.

86. To whom would they go?

A. To the application clerk, in the regular way.

87. And has he authority to decide them on his own account?

A. No, the application is made to the application clerk, and is referred to the superintendent for investigation, and the details are usually arranged with the superintendent, unless there is something out of the ordinary course of business to call it to my attention.

1650 88. And by the superintendent, you refer to Mr. Robb, do you?

A. Yes sir.

89. And each of those cases is determined upon its individual merits?

A. Yes.

90. And if the customer accedes to the demands of the company he gets the service; otherwise he does not?

A. Probably that's so; we aim as far as possible to put those things on a universal basis, so each man under similar conditions is treated in the same way.

91. How many services has your company installed since the first of September 1900?

Objected to by complainant as immaterial?

A. I don't know.

92. Will your records show?

A. Yes sir.

93. Will you ascertain, and be prepared to testify upon that question?

A. Yes.

94. And I wish you would give it by months, if your records show it?

A. All right.

95. And I would like to have lengths and details called for in the former question.

A. As to each service?

96. Yes; that is, you can combine the material called for in this question, with that called for in the former question.

A. They will have to be made up separately. I understand your question to be that you want a description of each service that has been installed since September 1st, 1900, showing the date when it was installed, the size of the pipe and the length of the service?

97. Yes—or the month—and whether or not any charge was made on it, and whether or not that charge has been paid
1651 by the consumer, and by your company by way of refunding; and I want locations also, as to streets.

A. That will be, the services laid in each month, on each street, and the size of pipe and length of that service, or size of pipe and aggregate length of services, and whether or not the service was paid for by the company or by the consumer, and if paid for by the consumer, whether gas to the amount of it was refunded, or any part of it?

98. Yes, that's exactly what I want. And there's one other thing I desire; that is, whether or not it is an original service, or whether the premises were formerly supplied by the old company?

A. I will give you that information if we have it.

99. How long have you known the various expert witnesses that were called by the complainant in this case?

Objected to by the complainant as immaterial.

A. From one to five or six or more years.

100. You have known all of them, have you?

A. I think I have known every one of you, yes sir.

101. Do you remember through what channels those associations or acquaintances originated?

Objected to by complainant as immaterial.

By the MASTER: Answer subject to the objection.

A. I can take up each witness one by one and probably tell you how my acquaintance with them came about.

102. I don't care to have you do that, if you will state in a general way, and briefly, it will be satisfactory?

A. Through my general acquaintance with men engaged in the gas business and generally through meeting them at associations and conventions and in various ways of that sort.

1652 103. How many of those gentlemen are now or have been associated with gas companies in which John R. Walsh, of Chicago, is or has been interested?

A. So far as I know, not one of them is or has been associated with any gas company in which Mr. Walsh is interested, unless possibly Mr. J. H. Eustace.

104. Do you know whether or not any or all of those various gentlemen are members of any syndicate of gas companies, or interested in any such syndicate?

A. I don't think any of those men who testified in this case are interested in any syndicate, at least so far as I know, with the exception of Mr. Doherty, who is the general manager as I understand it, of the MacMillan syndicate.

105. Over what territory does that syndicate operate?

A. Throughout all of the country east of Denver, including Denver.

106. What connection, if any, is there between that syndicate and the Peoria Gas and Electric Co.?

A. Absolutely none.

107. Has there ever been any?

A. No sir.

By the MASTER: Let me understand you: In your prior answer you stated "throughout all the territory east of Denver and including Denver." Do you mean to be understood as saying they control the gas price throughout all that territory?

A. No sir.

108. Or simply operate in that territory?

A. I mean they own some 18 or 20 gas plants which are located in the States east of Colorado, with one exception—that of the Denver gas plant.

1653 109. You don't mean to be understood as saying that they control all the gas plants?

A. No, they have some 18 or 20 gas plants, out of probably 1000 gas plants in that district.

By Mr. TICHENOR:

110. How many gas companies are there in the syndicate or trust of which the Peoria Gas and Electric Co. is one, if any?

Objected to by complainant as improper in form.

By the MASTER: It does not appear in the record. I presume it will be followed up. Answer subject to the objection.

A. Not any. The Peoria Gas and Electric Co. is organized entirely on an independent basis and not a member of any syndicate or owned by any syndicate.

111. What were the circumstances leading up to the formation of the trust agreement of December 19, 1900, pertaining to the capital stock of the Peoria Gas and Electric Co.?

Objected to by complainant as incompetent and immaterial.

By the MASTER: He may answer it subject to the objection.

A. It was understood when the company was formed, or when I became interested in the company, and Mr. Walsh became interested in it, that all of the stock would be held as a unit and the continuity of the management preserved, during a period of years; the voting trust agreement was in pursuance of that original understand- and carrying it out.

112. I will ask you to state whether or not that understanding was had with all of the subscribers of the original stock of the complainant company at the time such subscriptions were made, or before?

Objected to by complainant as incompetent and immaterial.

A. I don't know.

113. When did you first know that such an agreement was
1654 to be made, or did you participate in the plans which led up to the agreement?

Objected to by complainant as incompetent and immaterial.

A. When I first came here and talked the matter over with Mr. Clark and Mr. Miller, I stated that would be our position, and it was assented to by them at that time. In my previous testimony I have stated when I first came here, and it was at that visit that the matter was talked over.

114. What were the reasons which prompted that action on the part of yourself and Mr. Walsh?

Objected to by complainant as incompetent and immaterial.

A. I think that has been answered.

By the MASTER: If there is anything further he may answer more fully.

A. That was the reason—to preserve the continuity of the management of the company.

115. State whether or not it was the original intention of yourself and Mr. Walsh in organizing this company, to take the entire voting power of the stock out of the hands of the several stockholders and place it in the hands of the trustees?

Objected to by complainant as incompetent and immaterial.

By the MASTER: I don't think this inquiry would be competent now. He may answer the question subject to the objection.

Objected to further by complainant, on the ground it was not the best evidence.

A. That *was* not the fact and *is* not the fact. The agreement was open to anybody who wanted to sign it, and it was signed only by those who voluntarily signed it; if they saw fit to delegate their voting powers to other people, that was the end of it.

116. State whether or not all of the stockholders of the
1655 complainant company did sign that agreement?

Objected to by complainant as incompetent, immaterial, and not the best evidence.

By the MASTER: He may answer that question.

A. I don't know.

117. Within your knowledge, is that trust agreement still in full force and effect?

Objected to by complainant as immaterial.

A. So far as I know, it is.

118. And is it true also that the complainant company is being operated at the present time, and has been for some months past, under that trust agreement?

Objected to by complainant as immaterial. Objection overruled.

A. No, the company has never been operated under the trust agreement; it has been operated by the officers and directors.

119. In how many parts was that agreement executed?

Objected to by complainant as immaterial and irrelevant. Objection overruled.

A. There's only one copy of the agreement that I have ever seen or know anything of.

120. Do you know where that copy is at the present time?

A. The last I knew of it, it was in the hands of the Equitable Trust Co. I presume it's held by them in trust; that's the provision of the agreement.

121. To what extent, if at all, did you participate in the formation of that trust agreement?

Objected to by complainant as immaterial.

A. I don't recollect whether I saw it until it was prepared and read it over after preparation, or not. I think not.

122. To what extent, if at all, were you previously con-
1656 sulted with respect to what it should contain?

Objected to by complainant as immaterial. Objection overruled.

A. I don't think I was consulted at all. My recollection is it was rated simply as an ordinary voting trust agreement, and I wouldn't be consulted any more than I would in the matter of a deed.

123. Then your recollection is you had nothing to do with it?

A. I do not recollect of it.

124. Do you know of any person interested in your corporation who did have any participation in it?

Objected to by complainant as immaterial.

A. So far as I know, it was prepared by the attorney for the trust company, and I have no further information about it.

125. Was it placed in your hands for execution by the different stockholders?

Objected to by complainant as immaterial.

A. No, I think not; I have no recollection about it.

126. I'll ask you to state whether or not you did or did not procure the signatures of some of the stockholders to that trust agreement?

Objected to as immaterial by complainant.

A. I may have done so; I do not remember now.

127. State if it is not a fact that while you were endeavoring to secure signatures to that trust agreement, some of them protested very vigorously against it and against any arrangement of that character?

Objected to by complainant as immaterial.

A. I have no recollection of anything of the sort.

128. Do you remember that you did actually obtain signatures to the documents in question?

1657 Objected to by complainant as immaterial.

A. No, I do not.

129. Do you know who did obtain them?

Objected to as immaterial.

A. I don't recall. I don't know who did it.

130. Do you know whether or not it was done through your office in Peoria?

A. I don't remember about it.

131. Did you yourself sign it?

A. Yes, I signed it.

132. I'll ask you to state whether or not the several Peoria stockholders have been paid back in some form, all of the moneys which

they paid on account of the 20% assessment made on the original capitalization of your company?

Objected to as incompetent and immaterial.

A. Yes, I testified concerning that in my examination on the last hearing, that they had received back a sum equal to the amount of their assessments.

133. And did they not also receive interest upon it from the time they paid it, up to the time it was refunded?

Objected to by complainant as immaterial and incompetent.

A. Yes, I think so.

134. Is it not true, also, that all of those payments were made through the Peoria office?

Objected to by complainant as incompetent and immaterial.

A. No sir.

135. Do you know how they were made?

A. I think all of the payments were made by me individually, or by the Equitable Trust Co. I don't think any of them were
1658 made by the Peoria Gas and Electric Co. at all.

136. In what capacity were you acting at the time you made those payments, or for whom were you acting?

A. I was acting as a member of a syndicate.

137. What syndicate is that?

Objected to by complainant as immaterial. Objection overruled.

A. It was a syndicate having no connection with the Peoria Gas and Electric Company's gas business.

138. Was it a syndicate interested in the operation of gas companies?

Objected to as incompetent, irrelevant and immaterial. Objection overruled.

A. No sir, it was not.

139. When were those several sums of money paid in the manner you have testified?

Objected to by complainant as incompetent and immaterial.

A. I don't recollect the date.

140. Can you tell pretty nearly the time?

Same objection.

A. I can't without referring to my check book.

141. Will you please refer to it and give me the data later?

Same objection.

A. Yes sir, I will.

142. I asked you some questions when you were last upon the witness stand, with reference to the manner of your accounting.

Some were omitted. I desire to ask you now, what books of account, or books of entry, with reference to the operation of the gas business in Peoria, are kept in the Peoria office?

A. The consumers' ledgers, receipt book, and manufacturing books, these latter being kept at the works; and the plat book, and card showing the details of applications for gas, laying of mains and services, and setting of meters, and the handling of the meters. None of the general books, outside of these, are kept in the Peoria office.

143. What is the scope of the consumers' ledger?

A. It shows the amount of gas used each month through each meter, the amount of the bill, date when the bill is paid; in other words, it's an account with each consumer, or rather with each meter.

144. And do you still have two meters in service in all premises where both fuel and illuminating gas are used?

A. No.

145. In how many cases have you two meters under such circumstances?

A. I don't know how many. In most of the cases where there were two meters, the second meter has been taken out.

146. In such cases there is no way, then, by which you can determine what gas is used for fuel and what for illuminating?

A. No sir, not where gas for both purposes is used.

147. How long is it since you discontinued the use of separate meters for the two purposes?

Objected to by complainant as immaterial.

A. I think about the first of last November.

148. That was about the time that gas for the two purposes was put on the same basis?

A. Yes sir.

149. Then there is no way by which you can determine now what proportion of your gas is used for fuel purposes and what for illuminating purposes?

A. Not accurately, no. We get at it approximately by keeping a record of the gas sent out in the day time and the gas sent out after dark; that's only approximate, however.

150. Do you keep in the Peoria office a permanent record of the cost of distribution and the cost of manufacturing?

A. No sir.

151. By whom are those accounts kept?

A. They are kept under the supervision of the treasurer, by the Audit Company of Illinois.

152. In Chicago?

A. In Chicago.

153. In what business is the Audit Company of Illinois engaged?

A General auditing and accounting business.

154. In what manner does the material for the accounting reach the Audit Company's office?

A. Through the regular monthly reports. The bills for expenditures are sent to them from day to day. The pay rolls go in twice a month, and the final details once a month, shortly after the close of each month.

155. What specific name, if any, is given to the monthly report?

A. We don't have any monthly report of that sort. We have what are termed monthly abstracts, which show the amount of gas sold and the amount of residual sold, and a monthly report by the storekeeper showing the material which he has issued out to the various accounts during the month, and the amount he has received from the manufacturing department.

156. To whom are these various documents to which you have referred, sent?

A. They are generally sent to the Peoria Gas and Electric Co. at the office of the Audit Company of Illinois.

1661 157. Has your company an office with that company or in the same building, or in connection with it?

A. No, the Audit Co. of Illinois receives mail addressed to the Peoria Gas & Electric Co. and opens it and makes the proper entries on the books, from the statements which are sent in the mail.

158. What becomes of the vouchers for the month, for disbursements?

A. Disbursements are all made by checks from the treasurer's office, and proper vouchers are taken, and are filed away in the treasurer's office.

159. Do those in any manner go before the Audit Co. of Illinois?

A. They all go before them and are entered on the books.

160. That is, the original vouchers?

A. The original vouchers are all entered on the books and then turned over to the treasurer.

161. Do you send those vouchers direct to the Audit Co. or the treasurer?

A. We do not have anything to do with the vouchers. We merely pay the pay-rolls here, and small payments. Larger payments, our custom is to pay on the 20th of each month, and those payments are made directly by the treasurer's check, and vouchers are sent out from his office.

162. But are those not paid through your office?

A. No sir.

163. Are they sent direct to the parties?

A. They are sent direct to the parties, and the vouchers are returned to the treasurer; we don't see them here at this office.

164. But the data for any such vouchers is furnished from your office, is it not?

1662 A. The bills for materials come to us, and are either entered in the store room books, or stamped with the charges direct

and approved by me, and are then sent to the Audit Co. for vouchering.

(Testimony of same witness continued:)

165. Are you familiar with the manner in which the accounts of your company are kept in Chicago?

A. Yes sir.

166. Please explain the system, doing so briefly.

A. We use the voucher system, and all bills for materials and supplies are vouchered and entered in the voucher register, which is the book of original entry. They are then transferred to the expense ledger, in which the various vouchers are classified under the proper account, and the expenditures for each month ascertained in each branch of the business. These are assembled at the close of the month, in the general ledger and journal of the company.

167. Are those vouchers entered in the voucher register prior to the time that they are actually paid?

A. Yes sir.

168. In the several steps which you have described, what, if any, attention is paid by the accountant to whether or not the item has actually been paid, or at what point does it become material?

A. It doesn't become material at all, if I understand your question. We use an "accounts payable" account, to which all vouchers are credited as they are made up. The "accounts payable" account is charged when any voucher is actually paid; that is to say, when a check is drawn for it; and the outstanding accounts payable is shown by the balance in the "accounts payable" account.

169. At the end of each month?

A. At any time.

170. You carry that balance at any time?

1663 A. Carry that balance forward at any time. In other words, the quick liabilities of the company are shown by the "Accounts payable" account.

171. Is there any corresponding account of "Accounts receivable"?

A. Yes sir.

172. How is that entered?

A. We carry a "Gas account" into which the earnings for the month are credited, and a "Gas sales account," which is debited. The credits to "Gas sales account" are made as gas collections are made. The miscellaneous sales, such as residuals, coke, tar, ammonia, sales of gas stoves, etc., are carried into the "Accounts receivable" account. The balance in the "Gas sales" account shows at all times the outstanding amount of uncollected gas bills, and the balance in the "Accounts receivable" account shows all outstanding amounts owing to miscellaneous accounts.

173. Then, except as to the items which go into those two accounts last described, they are alike, are they?

A. Yes sir.

174. How frequently do you report to the Audit Co. collections from any of the items concerning which you have testified?

A. Daily.

175. How is the fund itself, which those reports represent, handled?

A. The collections are made here and deposited in the Merchants' national bank. I pay the pay-rolls, freight bills, and all small amounts; the balance in the bank is shown each day, and when this Peoria bank balance reaches an amount more than I need for my expenditures here, I remit the remainder to the treasurer in Chicago.

176. Then in the first instance all of your receipts go into
1664 the deposit here?

A. Practically all.

177. Where are these vouchers prepared—in Peoria or in Chicago?

A. The vouchers for expenditures made by me are made up here. The other vouchers are made in Chicago.

178. Along what line is the division between expenditures made by you and those not made by you?

A. There is no arbitrary rule. I make such expenditures as I see fit here,—generally, however, paying out only wages, office rent, telephone rent, postage, car fares, express charges, telegrams, and other small items. Our rule is to pay on the 20th of the month for all materials received by us in the preceding month and those payments are made from the Chicago office, treasurer's office.

179. And that covers all classes of material, does it?

A. Yes.

180. What if anything, have you to do with such materials, or with the bills therefor, as pass through the Chicago office in the manner explained?

A. I have nothing to do with them, further than to approve the bill before it goes to Chicago. My approval means that the material has been received and that the price is correct.

181. Are those items for obligations which you personally have incurred in the way of purchases or otherwise?

A. Always on behalf of the company.

182. Yes, but done by you personally?

A. Not necessarily by me personally. The superintendents of the various departments are authorized to purchase what supplies they need not exceeding $10. in any instance except in an emergency.

183. You occupy the position of purchasing agent for the company, though, do you not?

1665 A. As a general proposition, yes sir.

184. What, if any, statements or reports do you make, either monthly or otherwise, of the nature of an operating statement?

A. The superintendent of each department,—that is to say, of manufacturing and distribution, make up monthly reports, which

show—in the case of a manufacturing report, the amount of manufacturing materials on hand at the beginning of the month, the amount received during the month, the amount used during the month, and the amount on hand at the close of the month. It also shows the same facts with respect to the gas produced, showing the amount on hand at the beginning of the month, the amount made during the month, the amount sent out during the month, and the amount on hand at the close of the month. Similar facts are shown with respect to the production of residual coke, and tar, and ammonia.

185. Those all come from the superintendent of the works,—the manufacturing department?

A. Those facts are included in the manufacturing report. The report also shows the average productions of the month,—that is to say, the amount of gas made per pound of coal, the percentage of the coke made which is used under the benches, the production of ammonia per ton of coal carbonized, and the production of tar per ton of coal carbonized. It shows a comparison with similar results obtained in the corresponding month of the previous year.

The report of the superintendent of distribution shows the total amount of gas sent out as reported by the manufacturing superintendent, the amount sold, the amount donated or used at the works, and office of the company, and the amount unaccounted for, or leakage. It shows the leakage per mile of mains; the total number of consumers at the beginning of the month, the number of new consumers added during the month, the number of consumers discontinued during the month, and the total number of consumers at the close of the month.

1666

It shows similar facts as to the services and meters of the Co., the number of meters on hand at the close of the month and not set. It also shows the mileage of mains of the various sizes, at the beginning of the month; the amount, if any, laid during the month; the amount, if any, taken up during the month, and the amount at the close of the month.

It also shows the number of complaints which have been attended to during the month, the nature of those complaints; and the number of gas stoves set, water heaters and other gas appliances, and a comparison with the corresponding month of the previous year with respect to all of these matters.

These reports are sent by me to the treasurer's office in Chicago, to enable them to complete the statistical records.

186. Then as I understand your answer, there is no monthly report or statement which shows the financial affairs of the company for any given period?

A. No sir, we have no practice of that sort.

By the MASTER: In other words, as I understand you, your affairs are reported daily, all your daily transactions?

A. We report the daily collections and disbursements of money from this office, and send a manufacturing and distribution report

monthly, together with the abstracts which I referred to in my previous testimony.

Going a little further into the details of the business, the amount of my collections as reported daily are charged to me as vice president of the company, and I am relieved of those charges by
1667 proper vouchers showing the expenditures which I have made, or remittances made direct to the treasurer's office.

187. How long has the system which you have now described, been followed?

A. Since I took charge of the affairs of the company.

188. State whether or not the company that keeps your accounts furnished to you, or to any of the other officers, from month to month, or otherwise, trial balances?

A. They do not furnish any trial balances to me; whether they do to the treasurer or not I do not know. I don't think they furnish it to anybody here.

189. State whether or not all of these funds concerning which you have now testified, are kept entirely separate and apart from the funds derived from the electric department of the complainant company?

A. No, we do not keep the funds separate; we keep one bank account here, which includes collections from both the gas and electric and against which checks for both gas and electric expenditures are drawn.

190. Does the Peoria Gas and Electric Co. carry any insurance?

A. Yes sir.

191. What kind and in what amount?

A. You mean on its gas business?

192. Yes?

A. It carries employers' liability insurance, and I think we have still in force a public liability insurance policy. We also have a tornado insurance on the retort house, purifying house, holder and coal sheds; and we have fire insurance on the materials in the store room, but not on the main buildings.

1668 193. What is the nature of this public liability insurance which you carry?

A. Insures us against any liability for damages suffered by any member of the public by reason of our negligence or for any cause for which we would be legally liable.

194. Does it cover escaping gas?

A. No, I think it wouldn't—it would depend on the circumstances; if we were legally liable for the escaping gas it would. It would cover escaping gas, or people falling into our trenches, or any accident of that kind happening to anyone not in the employment of the company.

195. It's in fact nearly parallel with the employers' liability except in another field?

A. Yes.

196. Can you state from recollection how much of these several kinds of insurance you are carrying?

A. No, I cannot. I think we carry an employers' liability policy of $5,000 as against any one individual and $15,000 as against any one accident, and a limit of $5,000 to any one individual and $10,000 to any one accident as against the public. The tornado insurance is between $20,000 and $25,000, and the fire insurance is somewhere about $10,000 or $15,000, if I remember rightly.

197. I don't remember whether you have already stated the annual amount of your insurance.

A. You mean the annual premium?

198. The annual premium, I mean?

A. I don't recall now, but I think it's about $300.

199. For all purposes?

A. In connection with the gas department.

200. State the salaries paid the different officers of the
1669 company, and also its superintendents.

Objected to by complainant as incompetent and immaterial.

By the MASTER: It's already been gone over in the examination of this witness in chief.

By the WITNESS: My testimony shows the amount paid out for salaries of all officers for the accounting department and what proportion of those salaries were charged to the gas department.

By the MASTER: No, the testimony in the records shows what was paid out to employés in the gas department. But whether it does or not, I am not disposed to allow you to go into it. The opportunity for cross examination was once tendered you, and I do not think it is competent to go into it now; still if you desire to press the inquiry, the master will permit the witness to answer.

201. Do your books of account in Peoria, or your records, show the charges that you have made against the Peoria Gas Light and Coke Co. from October 24, 1901, and that have been paid?

A. Yes sir.

202. And will your records also show the various items and the locations, of those expenditures?

A. It isn't handled in that way. We do four classes of work for them: We lay services, including the setting of meters, and the furnishing of meter connections; we set gas stoves, including both labor and material; we read their meters, and we attend to their complaints. We have a card system, by which services, meters, complaints, setting of gas stoves, etc., are all itemized,—that is, the record of each transaction is kept on a card. Those cards, as to the majority of them—I think probably as to all of them—are turned over to them at the end of the month accompanying the bill rendered. We also have a working order system, and against
1670 those working orders, the store keeper charges the material issued out of the store room for account of that company. An examination of the working orders and of the time books would

show just what labor each man performed and in what branch of the service; it would not necessarily show exactly what house he worked at, or what particular location he worked at.

The supply tickets, which affect our requisitions on the storekeeper, will show where the material was used that is taken from the store room and charged up by the store-keeper to them. The time books will show the number of hours that each man worked on the work of the Peoria Gas Light and Coke Co., and in a general way what the character of the work was. These bills are made up at the end of the month from the time-books and from the working orders.

203. But so far as those expense items are concerned, they are not available in your office, are they?

A. Yes sir.

204. Are those summarized by months, or in separate items?

A. The summaries are made up each month; in other words a bill is made out charging them so much for each one of the various things we attend to for them, showing both labor and material.

205. That is furnished in the form of a statement, is it?

A. It is furnished in the form of a monthly bill.

206. And do you retain duplicates of those in your own office?

A. Yes, those are all copied before they are sent to the Peoria Gas Light and Coke Co.

207. Have you, further, in your office in Peoria, a record of all other transactions between your company and the Peoria Gas Light and Coke Co.?

A. All that relate to the operation of the companies with 1671 which I have anything to do.

208. And are those also available in the shape of duplicate statements?

A. Yes sir.

209. Has your method of accounting between the two companies been the same from the time that your relations commenced in October, 1901?

A. Yes sir.

210. Will you produce those duplicate statements at the convening of the court tomorrow morning?

A. The charges against the Peoria Gas Light & Coke Company? Yes sir. Do you want them tomorrow morning?

211. If it's convenient, and if not, when it is convenient to you.

(Testimony of same witness continued Friday, June 27, 9.30 a. m.:)

212. What books and records are kept by the company at its office in Peoria, pertaining to the financial part of the gas business of that company at this point?

Objected to by complainant as incompetent and immaterial and as having been gone over several times.

By the MASTER: He may answer it subject to the objection, if there is any doubt about it.

A. The consumers' ledgers, which show the amount of gas used by each consumer, the value of the same, and the date when the gas is paid for; a cash book, showing the daily cash receipts for gas bills and miscellaneous bills. I think those are the only books we keep.

213. Have you in the Peoria office any books and records, or data, that will show disbursements, and the items for which
1672 such disbursements are made?

A. Yes, the cash book shows all disbursements for payments made from this office of the nature concerning which I testified yesterday. We have also letter-press copies of the pay-rolls, and copies of the store-keeper's monthly reports showing the issue of materials each month.

214. Have you also records of the items and amounts, so far as disbursements for this territory have been made through the Chicago office direct, in the manner that you testified yesterday?

A. No sir, the assembling of the charges and of the records of disbursements is all made in the Chicago office. They have items which we know nothing about, and no summary is transmitted to this office.

215. I understood you to testify that all such items as are paid from the Chicago office direct, originally passed through your hands. Is my recollection correct?

A. Not payments; the bills which form the basis of the vouchers pass through my hands and are approved by me, and are there paid. We know nothing about the payments.

216. But no record of those matters is kept in your Peoria office?

A. Only through the store-keeper's record, where the bills are charged to the store-room. Our method is this: When we buy material, it is always on a written order, a copy of which goes to the store-keeper; when the invoice for that material comes in, the invoice is entered on the store-keeper's books, and is stamped with a charge to the store-room, as assuming that the book-keeper in Chicago will charge "Store-room account" with it and will pay the invoice in regular course; but all we know about it is that we have
1673 received the material and that the store-room is charged with it.

217. Is it simply charged with the material, or does it also appear what the price is?

A. It is charged with the invoice, which shows the quantity of material, and the price, and the total amount of the invoice.

218. Are some or all of those bills subject to discount?

A. Some of them are.

219. Have you from time to time knowledge as to whether or not discounts are received on those items, or any of them, and if so, is any record of it preserved in the Peoria office, or at the works?

A. Here in Peoria we take no account of discounts,—that is to say, of cash discounts; at the end of the year a statement is made up showing the total amount of discounts which have been taken by the treasurer settling these bills, and it is reconciled with the store-keeper's account.

220. Then if I understand your testimony correctly, you have not in the Peoria office full records of the gas business of complainant Co. at this point, from which you can make up a statement showing the condition of its affairs for any given period?

A. No sir, we have not. We couldn't make any accurate statement.

In addition, we keep what is known as a working order record, from which we can tell the cost at this office of each different job; that is a record made up from the store-keeper's supply tickets and from the pay-rolls, and gives the cost of each particular job of work done; but no attempt is made to summarize this, or to get the entire cost of any particular branch of the business.

221. Do the accounts in Chicago also show all settlements made between your company and the Peoria Gas Light and Coke
1674 Co. during the time elapsing from October 24 last to the present time?

A. No, the Chicago accounts do not show that. Those charges to the Peoria Gas Light and Coke Co. are made on the consumers' ledgers the same as sales of gas to any other consumer, and for the work which we do for them in the way of setting meters, laying services, setting gas stoves, and looking after theirs, we render bills just as we do to any other individual for work *for work* or material furnished, and those settlements are made from this office and the collections are reported merely in the daily cash report the same as any other business. They cannot distinguish at the Chicago office between the Peoria Gas Light and Coke Co. and any other consumer.

222. Have you in your office records which show your gas settlements with that company?

A. Yes sir.

223. Do those records also show the quantities settled for upon the basis of the two prices?

A. Yes sir.

224. Then as to your dealings with the Peoria Gas Light and Coke Co. your Peoria records are complete, are they?

A. Yes sir.

225. That is to say, they contain all the material?

A. Yes sir.

226. Where, if at all, is kept the record showing the loss of gas in your own system, between your station meter and the consumers' meters?

A. It's kept here in Peoria.

227. It does not appear in the books in Chicago?

A. No sir, excepting as it appears on the monthly report of the

superintendent of distribution, concerning which I testified
1675 yesterday. The books of original entry concerning that are kept here, and the Chicago office has merely the superintendent's report.

228. Do your records in Peoria also show or account for the entire difference between your station meter register and the register of consumers' meters, separating the quantities into items?

Objected to by the complainant as not the best evidence. Objection sustained.

By the MASTER: If you want to press the inquiry he may answer subject to the objection.

By Mr. TICHENOR: No sir, I do not.

229. Is there a difference in your operation between the station meter register and the aggregate of your consumers' meters?

A. Yes sir.

230. To what is that due?

Objected to by complainant as having been gone into.

By the MASTER: Answer subject to the objection.

A. It is due to the loss of gas, which we generally call unaccounted for gas, which may be condensation, or gas lost by leakage in the mains, or to a difference in the date of reading the consumers' and the station meter. The record of the station meter is kept daily, and is summarized at the close of each month. In reading the consumers' meters we take four or five days at the close of the month for such reading; it may be, and in fact often is the fact that the number of days required to read the meters varies, so that the sum of the consumers' meters will perhaps cover 30 days' use of gas, while the record of the station meter will be for 31 days' make of gas; there will be a variation there.

231. But in the course of time those differences are equalized, are they not?

1676 A. Yes, substantially.

232. Is that item of loss, to which you have referred, the only difference between your station register and the quantity of gas sold for any month?

A. No. In the record of the consumers' meters—that is to say, in the consumers' ledgers, is kept a record of gas donated and gas used at the works and the office of the company; this gas if not charged out on the books of the company, and no bills are made for it, and we don't treat it as gas sold.

233. Those different items are measured through separate meters, are they, and the account in volume kept the same as other accounts?

A. Yes sir.

234. Are these settlements to which you have referred, with the Peoria Gas Light and Coke Co., kept in your books of accounts or in any books of account, or are they kept in the form of duplicate statements in your office?

Objected to by complainant as having been covered.

A. I think I testified they were kept as all our similar accounts are kept, in the consumers' ledgers for the gas furnished and in the regular way for material and labor furnished. We use what is known as a "bill and charge" system, by which all bills are made in duplicate, the original going to the debtor, a duplicate copy going to the proper department manager, and the triplicate copy going to the book-keeper. The original of the triplicate copies is kept on file, but is entered in a petty ledger, what we call the miscellaneous ledger; so we have not only a book of entry, but we have the triplicate copy of the original bill on file in the office.

235. We would like to have you prepare to testify as to the settlements with the Peoria Gas Light and Coke Co. from October
1677 24, last, up to the present time, along the lines covered by your previous testimony, and also with reference to the differences between your station register and gas sold from month to month, for the same time.

A. Let me ask just what you mean by that: I understand that you want a statement of the amount of gas sold to the Peoria Gas Light and Coke Co. each month since October 24, last, dividing it into the gas sold at 75c. and the gas sold at 50c. per thousand?

236. Yes.

A. Then, in addition, you want the amount of the unaccounted for gas of the Peoria Gas and Electric Co., including also, and showing separately, the gas donated or used at the works and office of the company for the same period?

237. Yes, and also other items which you have charged to the Peoria Gas Light and Coke Co.—that covers their account.

A. We have other charges to them, for labor and material, other than for gas, and you want them included?

238. Yes.

A. In other words, you want all transactions between the Peoria Gas and Electric Co. and the Peoria Gas Light and Coke Co. since October 24th last?

239. Yes, if you can furnish them in your office here.

By the MASTER: Are you prepared to testify on these matters now?

A. Not completely; I could testify as to some of them, but not as to all of them. Do you want to know when each bill was paid?

240. I don't care for that. They were paid about the beginning of the month, were they not?

A. Yes, during the month.

1678 241. I don't care for that. I can ask you a general question that will cover that.

A. It would necessitate my taking each bill and checking it back against the cash book to see when it was paid.

242. I understood you to say that the books in Chicago do not show your settlements with the Peoria Gas Light and Coke Co. in items. Is my understanding correct or otherwise?

A. Yes, it doesn't show the complete settlements.

243. And I also understood from your testimony that the books in Chicago do not show those differences between your station meter register and the gas sold, concerning which you have just testified. Was my understanding correct upon that question?

A. The books do not show it. The Chicago office has merely a copy of the superintendent's monthly report.

244. Are there any other matters pertaining to the accounting department of your company, so far as pertains to its gas operations in Peoria, that are not shown by the Chicago books and accounts, and that are shown by your accounts in Peoria?

A. The Chicago books of accounts do not show anything more than the summaries of consumers' ledgers and the miscellaneous ledgers. Those records are kept in Peoria.

245. And do those Chicago books show in items all of your disbursements for the different departments, or otherwise?

A. Yes, they do.

246. In what manner is it most convenient for you to show those two matters concerning which I have inquired, by making up a statement or by testifying from your books and documents?

A. Probably the most convenient manner would be to have copies of the original bills against the Peoria Gas Light and
1679 Coke Co. made, which I can present and identify.

247. And so far as pertains to the other question——

A. That can best be made from a written statement.

248. Then both of them would be written statements?

A. Yes.

249. If you prefer you can present it in that form. How much time do you want in which to present it?

A. I can have them ready by tomorrow morning, or this afternoon if the hearing goes on this afternoon. I have a copy of nearly all the bills, probably all of them if I examine them carefully, here and the statements concerning the unaccounted for gas and the gas used in the works and office and donated can be made up very quickly from the monthly reports in the records of the office.

By the MASTER: Couldn't that matter be shown by showing the difference between the gas manufactured and the gas sold?

A. That would aggregate it, but he wants the unaccounted for gas separated from the gas used at the office and donated.

250. Can you tell from your office records the dates on which gas rates were fixed or changed by your company, and what those rates were, from the time you began to operate up to the present?

A. Yes, I think so. I may possibly have no record of one or two changes, but I think I can give it all.

251. You will please look it up and make a memorandum of it?

A. My recollection is that I have testified on that, that I looked it up and gave that in previous testimony, showing the price at which we commenced to sell gas, and all changes, and when the

price was changed to $1.50 for light and 75c. for fuel, and then again when it was changed to $1 straight.

By Mr. TICHENOR: I believe you did, in a general way. I don't remember the other portion of it. If you did we do not want it again.

1680 HENRY W. BICKNELL, called on behalf of the defendant, being first duly sworn, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. What is your business?

A. I am in the employ of the Peoria Gas Light & Coke Company.

2. In what capacity?

A. As a general clerk.

3. What are your duties?

A. I have charge of the books—that is, the principal books, attend to correspondence, and receive and disburse the funds.

4. How long have you been employed by that company?

A. Two years the first of May of the present year.

5. Had you had previous experience in the gas business?

A. No sir.

6. What line of business had you followed previous to your becoming connected with that company?

A. I was employed by the Portsmouth, Kittery & York Street railway.

7. Where?

A. At Portsmouth, New Hampshire.

8. I'll ask you to state whether or not you have been served with a subpœna to produce all books of account of the Peoria Gas Light & Coke Co., of Peoria, Illinois, from May 1, 1895, to May 1, 1900, including any and all books in which were made any entries pertaining to the business of said company; also all said company's secretary's monthly and other statements and reports to its board of directors, and to the company, and to its stockholders, for the same period; also all its treasurer's statements and reports to its board of directors, to the company, and to its stockholders, for the

1681 same period; also any and other reports, schedules, statements, papers, documents, data, memoranda, books and records of the said Peoria Gas Light & Coke Co. and of any and all of its officers, clerks and employés, for said period, pertaining to the business of said company, and especially with reference to its earnings during said period, and every part thereof?

Objected to by complainant, as incompetent and immaterial, and further that it makes no difference whether he was served with such subpœna or not, as he would have no right to produce any of the documents called for in such instance.

By the MASTER: Answer subject to the objection.

A. I have been asked to do that, but not being an officer of the company——

9. Were you served with that subpœna?

A. Yes.

10. I will ask you to state whether or not you have produced such books and documents called for by that subpœna?

Objected to by complainant, on same grounds as above.

By the MASTER: Answer subject to the objection.

A. I have not produced them.

11. Why have you not?

Same objection by the complainant.

A. I did not produce them because I considered I had no authority to do so without the advice of the counsel.

12. Who, if anyone, advised you not to produce them?

Same objection as above.

A. Not any one.

13. Then you just assumed that power, did you?

A. Yes sir.

1682 (At this point counsel for the defendant asked for an order on this witness to produce the books and documents in question. The counsel for complainant objected, and the master stated that there was nothing before him on which to base such order; that the defendant must first make it appear that such books and documents were connected with and material to the issues in this case.)

Continuation of examination:

14. Do you know who the officers of the Peoria Gas Light & Coke Company are?

Objected to as immaterial and incompetent.

A. Yes sir.

15. Who are they?

A. William B. McKinley president; George E. Macomber is treasurer.

16. Has the company a secretary also?

A. Yes.

17. Who is he?

A. W. T. Abbott.

18. Has it any other officers?

A. Not to my knowledge.

19. Where does Mr. McKinley live?

A. Champaign, Illinois.

20. Where does Mr. Macomber live?

A. Augusta, Maine.

21. Where does Mr. W. T. Abbott live?

A. Peoria, Illinois.

22. He is one of the attorneys for the complainant in this case?

A. I think he is.

23. What portion of his time does Mr. McKinley spend in Peoria?

Objected to by complainant as incompetent and immaterial. Objection was overruled.

A. Recently he has been here but a very small portion of the time; I get my instructions from him by correspondence.

24. How recently has he been here?

A. I think it was some two or three weeks ago that he was here.

25. On an average, how frequently has he been here dur-

1683 ing the time you have been employed by that company?

Same objection by complainant, as above. Same ruling.

A. Sometimes he would come once a month, and sometimes it might be two.

26. Does the treasurer of your company spend any of his time in Peoria?

A. He occasionally visits here.

27. How long has he been here?

A. He has usually made two or three trips per year.

28. And how much time does he usually spend here on the occasions of those different trips?

Objected to by complainant as incompetent and immaterial. Objection overruled.

A. Usually from one to two days.

29. Does either of those gentlemen perform any services in connection with your office work in Peoria?

A. They simply issue orders, and I receive any orders from them.

30. And those orders are issued from their respective places of residence, are they?

A. Yes sir.

31. Do they both issue orders to you?

A. Yes sir.

32. Do those two gentlemen issue orders to you indiscriminately, or do they severally cover different parts of the work?

Objected to by complainant as incompetent and immaterial.

A. Mr. Macomber issues orders in regard to financial affairs or business, and Mr. McKinley issues orders in a general way.

33. But different classes of orders?

A. Yes sir.

34. What office force has your company had since the 24th day of October, 1901?

1684 Objected to by complainant as immaterial and irrelevant.

A. There have been five employed; four beside myself; Mr. Gorman, Mr. Kelly, Mr. Benson and Mr. Alfs.

35. What are their respective duties?

Objected to by complainant as immaterial and irrelevant.

A. Mr. Gorman issues the working orders—that is, the orders to the workmen for doing any mechanical work; Mr. Kelly settles gas bills, and he also has charge of one of the consumers' ledgers, and also does other work. Mr. Benson has also had charge of one of the consumers' ledgers and assisted me in my work, in making the cash entries; and Mr. Alfs has attended to another consumers' ledger, and also has been employed as collector for the company.

36. Then you carry three consumers' ledgers, do you?

A. Yes.

37. What is the reason for that division?

Objected to by complainant as immaterial and irrelevant.
Objection overruled.

A. It's simply for the convenience of carrying the accounts and making the collections. The consumers are divided into three sections; of course, one book wouldn't carry all of it, and it's simply divided in that way for convenience.

38. How many consumers has the Peoria Gas Light & Coke Co. and how many has it had since the 24th of October, 1901?

Objected to by complainant as immaterial and irrelevant.
Objection overruled.

A. I don't know the exact number, but I should say somewhere between 4500 and 5000.

39. How has the number varied during the time you have been in the office?

1685 Objected to by complainant as immaterial, incompetent and irrelevant. Objection overruled.

A. Not very much.

40. During the time covered by your employment with the Peoria Gas Light & Coke Co., have you had entire supervision over the accounts?

A. I have of the principal books of the company.

41. Will you state in what manner those accounts have been kept during that time that you have been employed there—I mean with reference to the different books, and what material you enter in the different books?

Objected to as immaterial and irrelevant.

By the MASTER: You mean to confine it to the gas manufacturing business? It will be admitted subject to the objection.

A. We kept our books by what is known as the voucher system.

42. I don't mean that. I mean what books do you keep?

A. Our system of books consists of five books.

43. Please designate what they are?

A. We have a ledger, a voucher register, an expense register, and an "Accounts payable" ledger and a cash book.

44. Will you explain, briefly, each one of those different books, so far as it enters into the accounting of your co ?

Objected to by complainant as immaterial and irrelevant.

By the MASTER: Answer subject to the objection.

A. The voucher register is the principal book of entry. All entries of every nature pass through that book, and the expense register simply is a book which subdivides the operating expenses of the company. The ledger, of course, carries all accounts of every nature which are carried by the company; and the "Accounts
1686 payable" ledger simply carries the personal accounts with whom the company deal; and the cash book carries all cash items, of course.

45. When are the entries in the voucher register, as you call it, made?

Objected to by complainant as immaterial and irrelevant.

A. They are usually made once a month.

46. I mean with reference to the handling of the vouchers?

A. They are made up once a month.

47. And during that time the vouchers are allowed to accumulate are they?

A. Yes, the month's vouchers are allowed to accumulate, and entered at the end of the month.

48. That book, if I understand you correctly, contains nothing except the register of vouchers?

Objected to as immaterial and irrelevant.

A. That's all.

49. What part in the transaction of the business of your company, do those vouchers perform?

Objected to by complainant as immaterial and irrelevant.

A. They simply are vouchers which carry all bills that we pay—in the nature of a receipt for all moneys paid out.

50. And that covers everything in the way of disbursements, does it?

A. Yes sir.

51. Does this ledger to which you have referred, contain anything with reference to your consumers?

Objected to by complainant as incompetent, immaterial and irrelevant.

A. Which ledger do you refer to?

1687 52. In your set of five, that you mentioned?

A. There are two ledgers in that set.

53. I didn't understand that.

A. Yes.

54. Will you explain what they are and what they contain?

A. One, which we call the principal ledger, carries the accounts of the company—the property accounts—supply accounts and its operating expenses. The other is simply an auxiliary ledger and carries the accounts of people we purchase supplies of; simply takes the personal accounts out of the main ledger.

55. In fact, your principal ledger, as you call it, contains everything?

A. Yes sir.

56. Is there any transfer at all of consumers' accounts from your consumers' ledger, or is that the final entry of those items?

Objected to as incompetent, immaterial and irrelevant.

A. The only connection is that at the end of the month when the consumers' ledgers are finally made up, the total amounts are entered in the principal book.

57. Is that in the nature of a cash item?

A. No sir.

58. It includes the aggregate for the month?

A. Yes.

59. Whether it has been collected or not?

A. Yes.

60. All of your accounts pertaining to the gas business are kept in the Peoria office, are they?

A. Yes.

61. And have been ever since you have been connected with the office?

A. Yes sir.

62. What, if any, operating statements, monthly or otherwise, do you furnish to the officers of the company, or to anybody else?

Objected to by complainant as incompetent, immaterial and irrelevant.

1688 A. I have rendered a monthly statement, which covers the trial balance, or balance sheet, and monthly operating statement—which carries the income and operating expenses under a cash statement.

63. To whom are those reports made?

Objected to by complainant as incompetent, immaterial and irrelevant.

A. To William B. McKinley, president, and George E. Macomber, treasurer.

64. To both of them?

A. Yes sir.

65. And do you also retain a copy of that in your office?

A. Yes sir.

66. Those, I understand you to say, are rendered each month, for the month?

A. Yes sir.

67. Who has power to audit the accounts which constitute the basis of the vouchers to which you have referred?

Objected to by complainant as incompetent, immaterial and irrelevant.

By the MASTER: Answer subject to the objection.

A. I have paid out disbursements without auditing, without the approval of anyone, with the exception of occasional bills.

68. What, if any, peculiarity is there in those bills which you yourself do not pay until they have been ordered?

Objected to by complainant as incompetent, immaterial and irrelevant.

A. There have been but very few bills of that nature, and they have been in regard to legal expenses, and principally in connection with this case.

69. Not in connection with the operating account?

A. Not at all, no sir.

1689 70. Where are the funds received by your company kept?

A. At the Commercial national bank.

71. In Peoria?

A. Yes sir.

72. Has that been the case during all the time you have been employed here?

A. No sir.

73. Where otherwise?

A. At the First National Bank of Peoria.

74. In this city?

A. Yes sir.

75. During any part of the time that you have been employed by the Peoria Gas Light & Coke Co. has it kept an account at any other place than the two which you have mentioned?

Objected to by complainant as immaterial and irrelevant?

A. No other place, no sir.

76. Who in your office, if anyone, has charge of the handling of the funds, both in and out?

Objected to by complainant as incompetent, immaterial and irrelevant.

By the MASTER: Answer subject to the objection.

A. I have had charge of the funds since I have been here, for the past two years.

77. What final disposition do you make of these vouchers to which you have referred?

Objected to by complainant on same grounds as above.

A. They are placed on file in the office.

78. In your office here?

A. Yes sir.

79. And that has been done ever since you have been there has it?

A. Yes sir.

80. You have stated that you furnished a copy of the operating statement, etc., to Mr. McKinley, and another one to Mr. Macomber at the end of each month: I will ask you to state whether or not you furnish a copy of this same document to anybody else?

Objected to by complainant as immaterial and irrelevant.

A. No sir.

81. Those are the only copies that you put out?

A. Yes sir.

82. Do you know what is done with those copies after they leave your possession—that is, after you deliver them to those gentlemen?

Objected to on same grounds as above.

—. No sir.

83. They never come back to you?

A. No sir.

84. Are there any men employed by your company except those five to whom you have referred?

Objected to by complainant as immaterial and incompetent.

A. No sir.

85. Has there been any change in the working force since October 24th, 1901?

Objected to by complainant as immaterial and irrelevant.

A. No, I think not; it's the same.

86. Does your company operate a gas stove department in connection with its other business?

Objected to by complainant as immaterial and irrelevant.

By the MASTER: Answer subject to the objection.

A. Yes, we have until recently.

87. Who had charge of that while it was a part of your company affairs?

Objected to by complainant as incompetent, immaterial and irrelevant.

A. I purchased the stoves, and Mr. Benson and Mr. Alfs made the sales.

88. At the time you first entered the employ of the company, had it such a department?

Objected to by complainant on same grounds as above.

A. Yes sir.

89. How recently has it been discontinued?

Same objection.

A. It was discontinued the first of this month.

90. What was the reason for discontinuing it?

Objected to by complainant as immaterial and irrelevant.

By the MASTER: State if he knows.

A. Our company made a contract to have other parties handle the stoves.

91. Do you mean this particular make of stoves, or gas stoves generally?

A. Gas stoves generally.

92. With what other parties was it a contract was made?

A. The Gas Producers' Assurance Co.

Objected to by complainants as immaterial and irrelevant.

93. What is the business of that company?

Objected to by complainant as incompetent, immaterial and irrelevant. Objection overruled.

A. As I understand it, it's simply the selling of gas stoves for gas companies throughout a few States, wherever they make satisfactory terms to do so.

94. Does that company receive any compensation from your company for handling those stoves?

1692 Objected to by complainant as incompetent, immaterial and irrelevant.

By the MASTER: Answer subject to the objection.

A. I haven't been required to make any settlement with them.

By the MASTER: That isn't the question.

95. When will such a settlement be made?

Objected to by complainant as immaterial, irrelevant and speculative. Objection sustained.

96. When is such a settlement to be made, if you know?

Same objection as above.

By the MASTER: Answer if he knows.

A. I do not know.

97. Who made the arrangement with that company, if you know?

Objected to by complainant as immaterial and irrelevant.

A. William B. McKinley, president of the company.

98. Was he here at the time it was made?

Objected to by complainant as immaterial and irrelevant.

A. He was here about that time, yes; the time the contract was made; but he was not here when the contract was executed.

99. Did you participate in the arrangement to which you have referred?

Same objection as above.

A. No sir.

100. What was the reason for entering into an arrangement of that kind, so far as the Peoria Gas Light & Coke Co. was concerned, if that reason is within your knowledge?

Objected by complainant, as immaterial and irrelevant.

By the MASTER: State if he knows.

A. I have no knowledge of the reasons.

101. What connection, if any, exists between this company
1693 to which you have referred and your own?

Objected to by complainant as incompetent, immaterial and irrelevant, and not the best evidence. Objection overruled.

A. No connection, that I know of.

102. Who is in charge of that company at this point?

Same objection by complainant.

A. I do not know.

103. Do you have anything whatever to do with the management of that company or with its business?

A. No sir.

104. How many new service pipes have been put in for your company since October 24, 1901?

Objected to by complainant as immaterial and irrelevant.

A. I do not know.

105. Have any?

Same objection.

A. Yes sir.

106. Do you know in what territory or location those pipes have been placed?

Objected to by complainant as immaterial and irrelevant.

A. No, I do not.

107. Do you know how many new meters have been set for your company during the same period?

Objected to by complainant as immaterial and irrelevant.

A. No sir.

108. Do you know approximately as to either of those questio
A. No sir.
109. Who pays the bills for any such work or material?

Objected to as incompetent, immaterial and irrelevant.
1694 By the MASTER: That is assuming it is done.

A. I pay them.
110. Does not that furnish you information as to the number
location?
A. No sir.
111. Who, if anyone, in your office, has charge of that part of
work?

Objected to by complainant as immaterial and irrelevant.

A. T. N. Gorman.
112. What are Mr. Gorman's duties?

Same objection.

A. He issues orders to the workmen for setting meters and p
ting in services and for other mechanical work.
113. To whom does he issue them?

Objected to by complainant as incompetant, immaterial and irr
evant, and also for the reason Mr. Gorman had already been on t
stand and answered for himself.
The MASTER: Answer subject to the objection.

A. He issues the orders to the foreman of the work-shop.
114. Of your own work-shop?
A. No, of the Peoria Gas & Electric Co.
115. You have no work-shop of your own, have you?
A. No sir.
116. How long is it since those orders have been issued in th
manner?

Objected to by complainant as immaterial and irrelevant.

A. Since November 1st, 1901.
117. That is since your works shut down?
A. Yes.
118. Who, if anyone, in your office, other than yourself, handle
the bills for any work ordered by Mr. Gorman as you hav
1695 testified?

Objected to by complainant as immaterial and irrelevant.

A. Bills for settlement?
119. Yes?
A. No one beside myself.
120. From whom do you receive those bills?

Same objection by complainant.

A. You mean the bills for mechanical work?

121. Yes?

A. I receive them from the Peoria Gas & Electric Company.

122. And to whom do you make payment?

A. To the Peoria Gas & Electric Co.

123. What classes of work are handled in the manner to which you have just referred?

Objected to by complainant as immaterial and irrelevant.

A. Setting meters, putting in service pipes, setting stoves, and taking care of the complaints.

124. You take care of the complaints in your own office, do you?

A. Yes.

125. So far as pertains to your own customers?

A. Yes.

126. From what source do you obtain your information to the effect that work purporting to be covered by these bills has actually been done?

Objected to by complainant as immaterial and irrelevant.

A. The work orders are returned to the office with a notation from the foreman who does the work that the work has been done.

127. Who, if anyone, in your office, makes any personal inspection or examination with reference to any such work?

A. T. N. Gorman.

128. He personally goes to the different places, does he 1696 and inspects?

A. I misunderstood the question; no sir, there is no one.

129. To whom are those work orders returned after the work has actually been done, or after it purports to have been done?

Objected to by complainant as immaterial and irrelevant.

A. Mr. Gorman.

130. Are they sometimes returned to you also?

A. Sometimes they come to me, but I usually turn them over to him for entry and marking on the register.

131. To Mr. Gorman?

A. Yes sir.

132. What proportion of his time does Mr. Gorman spend in your office, and has he, during the time you have been there?

Objected to by complainant as immaterial and irrelevant.

A. It would be difficult to tell the proportion of time, because he has other duties which call him out of the office; but I should say perhaps two thirds of the time.

133. Do you mean other duties in connection with your business, or in connection with other business?

A. In connection with his political affairs and other duties of a private nature.

134. And not connected with the company?

A. Not connected with the company.

135. So far as your company is concerned, his duties are all in th office——?

A. Ever since I have been connected with the office.

136. What, if anything, have you to do with your company' holders and with its distributing system?

A. I have nothing to do with it.

137. Who, if anyone, in your office, has anything to d
1697 with the system and holders?

Objected to as immaterial and irrelevant.

A. No one in the office; they are under the supervision of th president of the company; the president acts as superintendent also

138. But there's no one living in Peoria who has any authority over them, or has anything to do with them?

A. No sir.

139. What, if any, main extensions have been made by your company during the time you have been connected with it?

Objected to by complainant as immaterial and irrelevant.

A. There have been but very few main extensions. Very few I cannot state where they have been, but there have been very few since I have been in the employ of the company.

140. Are you able to state from recollection approximately what number of feet of mains have been placed in the way of repairs or replacements, by your company, during the time covered by your connection with it?

Objected to by the complainant as immaterial and irrelevant.

A. No, I cannot give you any idea, because I have never been present when the mains have been laid.

141. Do you know that any mains have been put in to replace old ones taken out?

Objected to by the complainant as immaterial and irrelevant.

A. No sir, I don't remember that. There might have been a few feet, but not very many.

142. State whether or not any service pipes have been put in to replace others taken out by your company?

Objected to on same grounds as above.

1698 A. No, I don't remember that; there may have been a very few places, but very few.

143. Will your records show the various items concerning which I have been inquiring, as to the replacements of extensions of pipes or services?

A. I haven't had charge of that department of the work, and I wouldn't be able to state.

144. But isn't it carried into your books in such form that it is available there?

A. Not the books that I have charge of.

145. Have you books in which those matters are kept?

A. We have books of record of that kind, yes sir.

146. Do you personally now remember of any instance where there have been any such replacements of services?

Objected to as having been answered. Objection overruled.

A. No, I don't know personally of any instance, because I have never been present when any service has been put in since I have been employed by the company.

147. In the ordinary run of business in your office, would you have knowledge of those matters from the payment of bills for the work, or anything of that character?

A. No, I would not, because I would simply pay for material used in the work, but I wouldn't know where the material went.

148. And wouldn't you know for what purpose the material was used?

A. No, not in all cases; there might be some classes I would and some classes of materials I would not.

149. Then there would be nothing in the work order or in the bill that would show whether it was for replacements or new service?

A. The work order might state, yes.

1699 150. Are you able to state without reference to your books whether or not your customers have increased or diminished in number during the time you have been connected with the company?

Objected to as immaterial and irrelevant. Objection overruled.

A. I think they have not; I think the number of consumers remains about the same; of course, they have been taking on new ones and old ones have been dropping off, but I should judge from my knowledge the number of consumers remains about the same.

151. My recollection is you testified you have been there just about two years?

A. Two years, since the third of May. I arrived in Peoria the third day of May 1900.

152. How frequently do you make settlements with the Peoria Gas & Electric Co. for the business transacted between you?

A. Once a month, or as often as we have funds, to do so.

153. What classes of business does the settlement cover?

Objected to as incompetent, immaterial and irrelevant.

A. Labor and material used in the work.

154. When are settlements made for the gas furnished you by the same company?

Same objection as above. Objection overruled.

A. Made at the same time.

155. Who, so far as your company is concerned, determines the amount to be paid to the Peoria Gas & Electric Co. for gas furnished?

Objected to as incompetent, immaterial and irrelevant, and already in evidence in writing. Objection overruled.

A. I furnish the statement from our consumers' ledgers as to the amount of gas sold during the month; I also receive a statement from the superintendent of the Peoria Gas & Electric Co. as
1700 to the out-put during the month.

156. You don't take your own meter statements, do you, Mr. Bicknell?

Objected to as incompetent, immaterial and irrelevant.

A. No sir.

157. Then the material that goes into your consumers' ledgers is furnished by the Peoria Gas & Electric Company, is it not?

Same objection.

A. Yes; we pay the Peoria Gas & Electric Co. for taking the meter statements.

158. How much do you pay for that service?

Objected to by complainant on the ground it is a matter of record, in writing, and therefore not the best evidence; also objected to as incompetent.

By the MASTER: It does not appear yet that it is in writing.

By Mr. IRWIN: The contract was called for and marked by the reporter for identification.

By Mr. TICHENOR: I am asking for what has actually been done?

By the MASTER: You're asking them how much it pays. Isn't that a fact to be determined by the contract?

By Mr. TICHENOR: The contract may provide for one thing and the fact may be another.

By Mr. RITCHER: I would like to ask counsel what he proposes to show.

By the MASTER: Yes, I think it's proper to have the matter in the record in order to guide the master in his rulings.

By Mr. TICHENOR: As I understand the ruling the master does not require the witness to answer.

By the MASTER: I haven't ruled on it, in view of what has
1701 been said between the parties, but it is not fair to the master, or fair to the court, to offer secondary evidence of contents of a written instrument. I think it perfectly competent, even if this is offered in evidence, for you to contradict it by showing its provisions are not complied with.

By Mr. RITCHER: If counsel states that it is his purpose to show it has not been complied with I withdraw my objection.

By Mr. TICHENOR: My position is I am not seeking to contradict it; I am seeking to show the fact.

By the MASTER: Or to show the contents of a written instrument that covers the matter that is inquired of. The ruling is the same.

Continuation of examination:

159. From what sources have you, in making those settlements, obtained information as to the basis therefor?

Objected to by complainant as immaterial.

A. From the contract.

By the MASTER: That refers to the settlements for charges for taking the meters?

By Mr. TICHENOR: Everything.

160. Did you understand my question to refer to the settlements of all matters between your company and the Peoria Gas & Electric Co.?

A. Yes sir.

161. To what contract are you now referring?

A. To the contract made between the Peoria Gas Light & Coke Co. and the Peoria Gas & Electric Co. for the supply of gas, labor and material for its mechanical work.

162. And that is the contract which went in force about the 24th of October, 1901?

A. Yes.

163. That's the one to which you refer?

A. Yes.

1702 164. Who has authority and who does check against the account of your company in the Commercial National Bank of Peoria?

Objected to as immaterial and irrelevant.

A. You mean draw the checks?

165. Who signs them?

A. They are signed by William B. McKinley, the president, and are made payable to my order and I endorse the checks to whoever I seek to pay them.

166. And do you have a check for each individual item?

A. Yes sir.

167. Then you personally have no authority to check on the funds?

A. No, I have no authority to sign checks; I simply endorse checks to the order of anyone that I wish to pay the bill to. All checks are made payable to my order.

168. When with reference to the time that those payments are made, are the checks placed in your custody?

Objected to by complainant as immaterial and irrelevant.

A. I always have signed checks in my possession, and I pay bills whenver I have funds to do so.

169. Those checks as they come into your hands, are signed in blank, are they,—that is, the amounts are left blank?

Same objection as above.

A. Yes sir.

170. And you fill them in as occasion demands?

A. Yes.

171. Has there been any change in that respect during the two years you have been employed with your company?

A. No sir.

172. Is there any one, other than Mr. McKinley, who has authority to sign checks for any of those purposes?

A. No sir.

1703 173. During the time you have been connected with the company what active duties has your treasurer performed?

Objected to as immaterial and irrelevant.

A. He has directed the general financial plan of the company.

174. In what manner? By instruction to you or someone else connected with the local office?

A. By instruction to me.

175. I will ask you to state whether or not any funds are checked from this account to which you have referred, except by checks that pass through your hands in the manner that you have testified?

Same objection as above.

A. No sir.

176. Did you understand my question to apply to all the funds *are* are deposited in the Commercial national bank?

A. Yes, all the funds in connection with the company.

177. Did I understand you to say that all of your liabilities, as they accumulate, are paid from month to month at the end of each month?

Objected to as incompetent, immaterial and irrelevant?

A. I have disbursed all funds, that is, paid bills whenever I had funds to do so. Sometimes I don't pay a month's vouchers when they are ready to pay. We may not have funds to pay them, but whenever I have an accumulation suitable to meet bills I pay them without orders from anyone; that's been our custom.

178. I will ask you to state whether or not any funds are withdrawn from the account other than to meet the operating expenses of the Peoria Gas Light & Coke Co.?

Objected to as incompetent, immaterial and irrelevant.

179. Or I will say, to take care of the business of the Co.?

1704 Same objection.
By the MASTER: Answer subject to the objection.

A. There have been several times when we have had a little surplus, that I have sent the treasurer checks, which I presume he has invested. I don't know what he did, but of course they have to be returned later on.

180. That fact accounts for your not having funds at times with which to pay your obligations, does it?

A. No sir.

181. How is it accounted for, then?

Objected to as immaterial and irrelevant.

A. Along the latter part of the month, you know, when the collections are not being made there would be a period when we wouldn't have funds to meet the current bills; most of our collections come in in the early part of the month, and the latter part of the month there might be a period when there would be vouchers lying unpaid that we hadn't the funds to meet.

182. But as a rule you pay on the first of the month, do you not?

A. As a rule our accounts are closed and vouchers are all made about the 10th of the month, and then payment of bills goes on right afterward; as quick as the books are closed for the month, our next object is to pay all bills if we have the money to do it with.

183. Those are the bills for the preceding calendar month?

A. Yes. It might be, if it was a large item, that it must lie there for one or two or three months, just as we saw fit. Depend on how the collections happened to come in.

184. But I was speaking of the routine of your business in the office; that would be true to that extent?

A. Yes sir.

1705 185. Do you purchase your own meters that are set from time to time?

Objected to as immaterial and irrelevant. Objection overruled.

A. There haven't been any new meters purchased since I have been with the company.

186. Where did you get such meters as have been set, if any, during that time? Or haven't you increased your number of meters any during that period?

A. We have had a sufficient number in possession of the company at that time and during that time; there have been no new meters purchased; there has always been a stock on hand.

187. Have you bought any piping, either, for mains or services, during the time you have been connected with the company?

Objected to as immaterial and irrelevant. Objection overruled.

A. There has been one car-load of piping purchased, and then other small lots for service pipes, but not for mains.

188. How long ago was that purchase made?

A. It was when I first came here; I think it was in June or July 1900.

189. How long is it since it was exhausted?

A. I can't say. I have no record of how long it lasted, because it was a car-load of piping, both small and large sizes, for stove work and for services.

Cross-examination by Mr. ABBOTT:

1. Prior to your employment by the Peoria Gas Light & Coke Co. had you been engaged in a similar capacity for other corporations?

A. Yes sir.

1706 2. And for about what period of years?

A. About three years I was with the Portsmouth, Kittery & York Street railway.

3. Are you familiar with the duties usually performed by the president and treasurer respectively, of similar corporations?

Objected to by defendant as incompetent and immaterial, and calling for a conclusion of the witness, and not cross examination. Objection overruled.

A. I think so.

4. Since you have been employed by the Peoria Gas Light & Coke Co., what and who has been the source of your authority as to matters of general policy of the company?

A. W. B. McKinley, the president.

5. In addition to the information as to the affairs of the company which Mr. McKinley would gain in his personal visits to Peoria and such directions as to its policy which he would then give, you may state whether or not he is advised from time to time as to the general affairs and management of the company?

Objected to by defendant as incompetent and as calling for a conclusion of the witness. Objection overruled.

A. I understand as to whether Mr. McKinley has advised?

6. As to whether he *is* advised?

A. Yes, he is advised by correspondence.

7. From whom do you receive your directions in regard to either the general policy and management of the company or matters relating to the mechanical part of it?

A. I receive my directions from Mr. McKinley in regard to the superintendence, and as to the general affairs of the company from Mr. McKinley.

1707 8. During the time that you have been connected with the Co. you may state whether or not Mr. McKinley has performed the duties usually assumed by the president of such a corporation?

Objected to by defendant as improper and incompetent and calling for a conclusion of the witness.

By the MASTER: Answer subject to the objection.

A. He has.

9. And I think you stated also, in addition to that, that he had performed with reference to the mechanical part of it the duties usually appertaining to a superintendent?

Objected to on same grounds as above.

A. He has.

10. State whether or not the treasurer, Mr. Macomber, has been from time to time informed by you as to the financial matters connected with the company which come under the province of the treasurer of such a corporation?

Objected to by defendant as incompetent, improper, and calling for a conclusion of the witness, and as not cross-examination.

By the MASTER: Answer subject to the objection.

A. He has been advised in regard to such matters by me.

11. From what source or authority or from whom or by whom are you advised or instructed as to the general financial policy and management of the company?

A. George E. Macomber, the treasurer.

12. Is it true in a manner similar to that in which you receive directions or instructions from Mr. McKinley as to the general policy or mechanical part of the business?

A. Yes sir.

13. In making your monthly settlements with the Peoria
1708 Gas & Coke Co., either for gas furnished or for material and labor, in any given month, you may state whether the bills of that company are handled in the same way as the other general bills of your company which are met from month to month?

A. They have been handled exactly the same.

14. Is there any difference in the manner of receiving the bills, making out the vouchers, and paying the bills which are presented from month to month by the Peoria Gas & Electric Co., from that of any other of the current bills of your company?

A. Not any.

15. Is this W. B. McKinley you speak of the same man who is a candidate for university trustee?

Objected to by defendant as immaterial and incompetent, and not cross examination. Objection sustained.

Re-direct interrogatories by Mr. TICHENOR:

1. The two companies mentioned by you are the only ones by whom you have ever been employed, are they not?

A. No sir, I have been employed by other companies.

2. In substantially the same capacity as that described by you?
A. Not exactly. I was employed as auditor of the Rockland, Thomaston & Camden street railway previous.
3. With how many other corporations have you at different times been associated?
A. No other corporations.

1709 FRIDAY, *June 27th*, 1902.

Defendant's counsel moves the master for an order requiring the production of the books of the Peoria Gas Light & Coke Co. to be used upon the hearing of said cause, and presents the following affidavit in support of said motion:

" UNITED STATES OF AMERICA, }
Northern District of Illinois. }

In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY }
vs. }
CITY OF PEORIA. }

Affidavit of Henry Mansfield.

STATE OF ILLINOIS, }
Peoria County, } *ss:*

" Henry Mansfield, being duly sworn, on oath states that he is city attorney for the City of Peoria, Illinois, and as such is in charge of the defense in the behalf of said city in the above entitled case.

"Affiant further states that the Peoria Gas Light & Coke Company, a corporation, of Peoria, Illinois, received its charter from said State about the year 1855; that for many years prior to about October 24, 1901, it was engaged in manufacturing and selling gas, in the ordinary way, for illuminating and fuel purposes in said city of Peoria, and in the territory adjacent thereto, and until about
1710 May 1, 1900, it was the only company engaged in the business aforesaid within said city and its suburbs; that while the said company so continued the manufacture and sale of gas its business was identical in character with that now and heretofore carried on by complainant company in a part of the same district.

" Affiant further states that he has reason to believe, and does believe and so states that the books of account, statements, reports, etc., kept by said Peoria Gas Light & Coke Company in the usual and regular course of its business for the five years ending May 1, 1900, called for by a certain subpœna entitled in said cause, and duly

and legally served on Henry W. Bicknell, in the service of said company, and who has testified herein, said subpœna having been served on the 25th day of June, 1902, a copy of which is hereto attached, for greater certainty, and made a part hereof, *certain* material, proper, pertinent and necessary to a proper defense on behalf of said city of Peoria in said cause; that from said material so called for affiant will able to prove the cost of gas delivered to consumers in said Peoria district during said five years, together with all other facts of a material character in connection with said business, and that such proof will establish or tend to establish, the fact that the ordinance passed by the city council of said city, fixing a maximum rate of seventy-five cents per thousand cubic feet, to be charged by gas companies operating therein, is not unreasonable in respect to the maximum rate so fixed, but on the contrary that said price in every respect is fair and just to said gas companies, and in no manner operates as a hardship or injustice to them, or to either of them, or to any of the parties interested therein.

"Affiant further states that substantially all the territory
1711 in the Peoria district reached by complainant company is now, and for many years last past has been, supplied with gas service by said Peoria Gas Light & Coke Company; that complainant company began active operations in furnishing gas about May 1, 1900, its customers then and now being almost wholly within the field reached by said Peoria Gas Light & Coke Company.

HENRY MANSFIELD.

"Signed and sworn to before me this 27th day of June, A. D., 1902.

[SEAL.] MARY E. POWELL,
Notary Public.

"UNITED STATES OF AMERICA,
Northern District of Illinois, Southern Division.

The President of the United States of America to the marshal of the northern district of Illinois, Greeting:

"You are hereby commanded to summon Thomas N. Gorman, Henry W. Bicknell and Francis S. Kelley if he shall be found in your bailiwick, to be and appear before me, I. C. Pinckney, special master in chancery for the northern district of Illinois, southern division aforesaid, at the United States court room, in the city of Peoria, on the 26 day of June at 2 o'clock p. m., and to bring with him and produce at the time and place aforesaid, to be used as evidence, all books of account of the Peoria Gas Light & Coke Company, of Peoria, Illinois, from May 1, 1895, to May 1, 1900, including any and all books in which were made any entries pertaining to the business of said company; also, all said company's secretary's monthly and other statements and reports to its board of directors,

and to the company, and to its stockholders, for the same
1712 period; also all its treasurer's statements and reports to its board of directors, and to the company, and to its stockholders for the same period; also any and all other reports, schedules, statements, papers, documents, data, memoranda, books and records of the said Peoria Gas Light & Coke Company, and of any and all of its officers, clerks and employés for said period, pertaining to the business of said company, and especially with reference to its earnings, during said period, and every part thereof, and then and there to testify, and the truth to speak in a case pending before me, wherein The Peoria Gas & Electric Company is complainant, and The City of Peoria is defendant.

"Hereof fail not, under the penalty of the law, and have you then and there this writ, with the endorsement thereon *in* the manner in which you have executed the same.

"Given under my hand this 25 day of June A. D. 1902.

I. C. PINCKNEY,
Special Master, United States Court.

"PEORIA, *June 25th*, 1902.

"Hon. Henry Mansfield, city attorney, Peoria, Illinois.

"MY DEAR SIR: I have the honor to inform you that I have this day served the subpœna on Thomas N. Gorman, Henry W. Bicknell and Francis S. Kelley, in the case of The Peoria Gas & Electric Company *vs.* The City of Peoria. I enclose herewith receipt for marshal's fees in said case.

Very respectfully,

JOHN A. AMES,
U. S. Marshal,
By S. O. TRIPP, *Deputy.*

1713 Objected to by complainant's counsel.

By the MASTER: Do you aver in the affidavit any facts by which it can reasonably be inferred that the cost to the consumers of gas manufactured by the Peoria Gas Light & Coke Co. would be at substantially the same cost of gas manufactured by complainant company? Don't you leave all this as a matter of inference, and in a matter as grave as this, could the master infer anything from the language employed?

I think your affidavit ought to be sufficient to show to the master, and to the court also, that it is a fact, or you have reason to believe it is a fact, that the companies are one and the same thing; or that the cost of manufacture of gas to the company is in this case not in excess of the cost of the manufacture of gas to the complainant company. I doubt very much your right to subject this Peoria Gas Light & Coke Company's books to a search in this case, unless your affidavit is sufficient to show either some identity of interest, or that the

cost of the manufacture and distribution of gas by complainant company could be fairly inferred from the facts shown by the books of the Peoria Gas Light & Coke Co. of the cost to them. I don't think it follows as a conclusion of law that because you might subject the books of the complainant company to search in this case, that you can necessarily go outside and subject the books of a company who is, so far as your record shows, in no way connected with the complainant.

I am inclined to hold, and do hold, that the affidavit is not sufficient to make the order.

To which ruling of the master the defendant, by its counsel, then and there excepted.

1714 (The defendant then asked leave to recall Mr. Bicknell, in connection with the above motion, which leave was granted.)

HENRY W. BICKNELL, recalled by defendant, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. You are the same gentleman who testified yesterday in this case, are you?

A. Yes sir.

2. State whether or not the books of account or other material called for by the subpœna served upon you and referred to in your testimony, are in your custody?

A. No, not all of them,——

3. Who has charge of the books?

A. —only the books of the company. The papers and documents and records which the subpœna calls for are not in existence to my knowledge. I have never seen anything of the kind.

4. Is there any other person in connection with your company who has anything whatever to do with the books of account concerning which you testified yesterday?

A. No one that has the custody of them; of course, there are others that work on the books, but they have all been in my custody since I have been here.

5. And that has been true during the time covered by your connection with the Peoria Gas Light & Coke Company?

A. Yes sir.

6. Do you say that you have no knowledge concerning the material called for by the subpœna referred to?

A. Yes. So far as the secretary's and treasurer's reports, I understand that there never have been any treasurer's reports made,

1715 and in fact, if there have been any secretary's reports made they are not on file to my knowledge. I have never seen anything of the kind since I have been here.

7. What, if any, of the material called for by the subpœna, is in your custody?

A. The principal books of the company; they would be the ledger and journals, and possibly some other original books of entry.

8. How about the consumers' ledgers?

A. The consumers' ledgers are there.

9. During the time covered by your connection with the company concerning which you have testified, have you not seen any secretary's monthly reports or statements or other reports or statements, as called for by that subpœna?

Objected to by complainant as incompetent, immaterial and irrelevant.

By the MASTER: Answer subject to the objection.

A. The only records of that kind that I have seen at all have been a few which the private records of the company contain. There are some copies there that I presume are entries of that kind,—that is, a partial statement, I judge from their appearance, in the private records of the company, which is either previous to or following the annual meeting. That's the only records of that kind that I know of, and I think they are incomplete, as far as following one after another, is concerned.

10. In the manner that you have testified, do they cover the period mentioned in that subpœna?

A. I cannot say from memory.

11. I will ask you to state whether or not since you have been connected with the company in question, any material of that
1716 character has been removed from that office?

A. No sir, not to my knowledge.

Cross interrogatories by Mr. ABBOTT:

1. When you state certain books of account of the company are in your possession, do you not refer, or do you refer to such books as have been opened and kept during the time that you have been employed by our company?

A. Well, all the books of the company, that is, the old records and the new, have been in my possession since I have been there.

2. What books have been opened new and continued since you have been there?

A. The complete set of books which I referred to yesterday in my testimony had not been opened when I first came here. The system of keeping books was entirely changed; we adopted the voucher system at that time, and the records which I have kept have been under that system.

3. Then what, if anything, since you became employed by the company, have you had to do with the old books of the company that were kept prior to the time of your employment?

A. Nothing.

The defendant, by its counsel, then renewed its motion for an order requiring the witness to produce upon the hearing of this

cause before the master, the books of said Peoria Gas Light & Coke Company.

The master overruled said motion; to which ruling of the master the defendant, by its counsel, then and there excepted.

1717 The defendant, by its counsel, moves the master that so much of the record as pertains to the evidence required by its affidavit herein, may be certified to the U. S. circuit court, southern division, northern district of Illinois, for a review of the master's rulings thereon; which motion was allowed.

1718 In the Circuit Court of the United States for the Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY
vs.
CITY OF PEORIA. } In Chancery.

This day this cause coming on to be heard by the court, on exceptions to the ruling of the special master herein, denying the defendant's application to compel the production of certain books, records and documents of the Peoria Gas Light & Coke Company sought to be obtained, through a *subpœna duces tecum* served upon one H. W. Bicknell, an employé of said company, dated June 25th, A. D. 1902; and the said special master having denied the application of the defendant to compel the production of said books, records and documents, upon the affidavit of Henry Mansfield, city attorney of the city of Peoria and counsel for the defendant; and on exception being duly taken to the said ruling, and the said cause being referred to the court; and the court having heard the arguments of counsel and being fully advised in the premises, doth order, adjudge and decree that the said ruling of the said special master upon such application by the defendant, The City of Peoria, be and the same is hereby fully sustained and the exceptions to said ruling be and the same are hereby overruled.

1719 GEORGE W. BARKER, called on behalf of defendant, being first duly sworn, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. You are the same witness who was called once before in this case, are you not?

A. Yes sir.

2. State whether or not there is kept at the works of the complainant company, by you, or under your supervision, any account of the coke, tar and ammonia manufactured, sold, stock on hand, etc., substantially in the same way as the gas account is kept concerning

which you formerly testified; or is there such a record of those materials kept at the works?

A. Yes sir.

3. Is that record also kept in "Exhibit 20" which you identified, concerning which you testified before, so far as pertained to the gas production, etc.?

A. The only other record that we keep down there, is just a blotter or day book.

4. But I'm asking whether or not you keep a record of coke, tar, etc., in "Exhibit 20" which is now before you, with your record concerning gas production, etc.?

A. We keep that in our store-room ledger.

5. Isn't this your book?

A. This is the manufacturing record.

6. And that is the same book in which you keep your gas manufactured from day to day?

A. Yes sir.

7. Will you state in what manner the record of the residuals at the works, is kept, from day to day—not what the books
1720 show, but in a general way explain the method of keeping those various items; when or how frequently you make such records?

A. We have another book just like this, and the party's name here, the date the coke went out, and the gross tare net weight.

8. I'm asking you now with reference to your manufacture of coke and the other residuals?

A. We don't have any other book pertaining to the manufacture, at all, except this one.

9. Do you make those entries with reference to the residuals each day?

A. Make them in this book only.

10. In this book, from day to day?

A. Yes sir.

11. And that is the book which you have identified as "Exhibit 20" is it?

A. Yes.

12. Will you explain the different records in "Exhibit 20," that you make, from day to day, so far as pretains to the residuals?

A. We make out all bills, and just keep track of the people's names that get the coke.

13. I mean so far as they go into this book. Will you explain all these various columns?

A. We figure it from our coal sheet; the amount of coal each day to get the amount of coke made, tar made, and ammonia.

14. What does the first column in "Exhibit 20" pertaining to residuals, under the month of April, 1901, show?

A. Stock, 6 a. m.

15. What does that mean?

A. Coke on hand, as close as we could get at it.

16. It means the amount of coke that you have on hand at that time?

A. Yes.

1721 17. What does the second column, unded the head of "Made" show?

A. The total coke made each day.

18. What does the column headed "Received" indicate?

A. Coke that we purchase elsewhere.

19. What does the next column show?

A. Coke used, benches fired not used.

20. What do you mean by that? What is the meaning of it?

A. We have benches in readiness for manufacturing gas that are not used, and we just have it on hand ready to start up.

21. As a general rule do you keep at least one bench fired which is not actually producing gas,—one or more?

A. According to whether we need the gas or not.

22. Do you as a rule carry one bench?

A. No sir.

23. But when you do have such a bench in readiness as a reserve this column indicates the fuel that is used under that bench—this column marked B. f. n. u. at the head—is that it?

A. Yes.

24. What does the next column show?

A. The coke used under active benches.

25. Do those figures represent pounds in each case?

A. Yes.

26. As to all the columns concerning which you have testified?

A. Yes sir.

27. What does the next column indicate?

A. Per cent. used, coke made.

28. That is, that's the per cent. for that particular day?

A. Yes.

29. What are the letters at the head of the column which indicates the quantity of coke used under benches in action?

A. "Act. B."

30. And what are the initials at the head concerning per cent. about which you testified?

1722 A. "Per cent."

31. I understand from your testimony that the figures continuously in the column indicating percentage of coke made, represent the same thing as that concerning which you testified,—that is, the account is kept in this way all the way through, is it?

A. Yes.

32. What is the meaning of the column headed "Used elsewhere"?

A. That's coke that is used under boilers, salamander, anything of the kind, other than manufactured.

33. And that would be anywhere except in connection with the benches, would it?

A. Yes sir.

34. What is the meaning of the column headed "Sold"?

A. Coke sold in pounds.

35. On the different sides, opposite where those items are entered?

A. Yes sir.

36. What is the significance of the next column headed "Breeze"?

A. That's the pounds of breeze that we get from the coke each day and used under the boilers.

37. What is that material?

A. That's the breakage from coke; it's loss in coke.

38. Fine material—broken from handling the coke, is it?

A. Yes sir.

39. Is that a part of the make of each day as shown in the column headed "Made" or is it additional?

A. It's additional.

40. Whether the "breeze" weight is a part of the "coke" weight?

A. No sir, it isn't.

41. What is the meaning of the next column headed "Screenings"?

A. The amount of screenings used under the boilers,—boiler fuel.

42. Is that used in connection with the breeze?

A. Yes.

1723 43. And for the same purpose?

A. Yes sir.

44. What does the first column under the head of "Tar" and marked "stock" indicate?

A. Stock in gallons, 6 a. m.

45. And that means on the different dates opposite which those items appear?

A. Yes.

46. And under the head of "Made" also, under the general head of "Tar"?

A. That's the amount made in gallons.

47. Each day?

A. Yes, as near as we can figure it.

48. How does it happen that on some days there are no items entered under that column?

A. According to the measurement of the well. We never can take an exact measurement of a tar well; we don't figure it that way at all any more.

49. But these measurements are taken from the well itself, are they?

A. Yes, they're not accurate.

50. And the next column, under the heading "Sold" indicates the tar sold from time to time, does it?

A. Yes.

51. And that is also in gallons?

A. Yes sir.

52. Does your testimony in regard to the tar also apply to the

mmonia appearing in the columns following that representing the
ar?
A. Not just exactly the same.
53. What is the meaning of those various columns?
A. The first column is crude ammonia, in gallons, stock; the
ext is concentrated in stock, gallons, and the amount made, con-
entrated.
54. And the column "Made" indicates that made from day to day, or whenever the quantity is taken, does it?
1724 A. From day to day, yes; when the still is in operation.
55. But there are days when the still is not in operation, nd that accounts for the fact that under some days there are no ntries under the column of "Made"?
A. Yes sir.
56. How is the quantity of coke represented under the heading Made," ascertained?
A. It's figured from the amount of coal used.
57. And it's figured on a percentage basis all the time, is it?
A. Yes sir.
58. What is the meaning of the figures appearing below the columns themselves, concerning which you have testified?
A. They are put down there, supposed to be totals. I don't know whether they are or not.
59. When do you take an account of the breeze which appears under its appropriate column here, as you have testified?
A. When do we take an account of it?
60. Yes?
A. In what way?
61. For the purpose of getting the items which you enter in this book?
A. Every morning.
62. Are those quantities obtained by actually weighing the material itself?
A. No sir.
63. How is it ascertained?
A. Guess at it.
64. Have you any measure, or means of ascertaining with reasonable accuracy, what it is in quantity or weight?
A. No sir, not unless we would weigh it, of course.
By the MASTER: What is this breeze you are speaking if? Is it the coke that becomes too fine in handling?
A. Yes, little chips; it's dirt from coke; just like coal dust.
1725 65. That you use for boiler purposes, do you?
A. Yes sir.

By Mr. TICHENOR:

66. State whether or not the accounts of these various residuals concerning which you have testified have been kept in the same form up to the present time, continuously, from October 24, 1901?

A. They have been kept just the same.

67. And those all appear in "Exhibit 20," do they, under the various months?

A. Yes sir, there may be some slight changes.

68. And where does the account of residuals appear in this book for each month as compared with the account of gas concerning which you testified on your former examination?

A. On the next page to the gas manufacture.

69. And that's true in each case, is it?

A. A double page, yes sir.

By Mr. TICHENOR: We offer in evidence, from "Exhibit 20," concerning which the witness has testified, commencing with October 24, 1901, a copy of the columns—first, indicating the connected make of the gas; second, the column showing the candle power; third, the column indicating total amount of coal carbonized; fourth, the total yield of gas per pound of coal; fifth, the number of retorts in use, and sixth, the number of men employed at the retorts—commencing with October 24, 1901, and ending at 6 o'clock a. m., May 5, 1902.

By Mr. ABBOTT: We make no objection on the ground a copy is offered instead of the original, under the stipulation heretofore made, but we object on the ground that the paper offered is immaterial, irrelevant, and entirely too remote to have any bearing on
1726 the issues in this case.

By the MASTER: It will be admitted subject to the objection.

By Mr. RITCHER: We also reserve the right to bring in the original if it is not a true copy.

By Mr. TICHENOR: We also offer in evidence from the same book, pertaining to coke, and for the same period of time, the column marked "Made" showing the amount of coke made per day; second, the column marked "Percentage" showing the percentage of coke used to the make; third, the column marked "Sold" indicating the quantity of coke sold from time to time; fourth, under the heading "Tar" first, the stock, indicating the amount of tar on hand at six o'clock in the morning of each day; next, under the heading "Made" the amount of tar made per day, both being in gallons; and lastly, under the head of "Ammonia" the column headed "Made" indicating in gallons, concentrated ammonia.

We also offer in evidence the total breeze and screenings used for each calendar month, commencing with October 24, 1901, and ending with May 5, 1902, the summaries appearing at the close of the statements covering coke, tar and ammonia, for each separate month.

Defendant, by its counsel, made the same objections as last above; also the further objection that the footings were made by the typewriter who made the copy.

By Mr. RITCHER: We object to anything being put into the evidence as a copy——

By Mr. TICHENOR:

70. Will you look at "Exhibit 20" and state what amount of breeze and screenings were made on the 24th day of October, 1901, in the complainant company's manufacturing plant?

1727 A. On October 24th, there was no breeze on hand; 5,000 lbs. of screenings.

71. Take each day, if you please, in the same manner, and follow it through the month of October?

By the MASTER: I do not think so, Mr. Tichenor. I will overrule the objection so far as it requires any details of this matter from day to day, as a useless encumbrance of the record.

72. How many lbs. of breeze were used at your company's works from the 24th of October, 1901, to the 31st day of the same month?

A. It isn't added up here.

By the MASTER: Is there anything in the record before you to show that?

A. The figures used each day, yes sir.

By Mr. RITCHER: If they bring in evidence as to what our totals in our books are, but they will have to connect it with the evidence and not the copies.

A. 9800 lbs. breeze; 26700 lbs. screenings. 85600 lbs. breeze; 233800 lbs. screenings.

By the MASTER: For what month is that?

A. November.

73. Will you also give the summaries of the same columns for the month of December, 1901?

A. 69470 lbs. breeze; 510600 lbs. screenings.

74. Now for the month of January, 1902?

A. 180100 lbs. breeze; 334400 lbs. screenings.

75. For the month of February 1902?

A. 209000 lbs. breeze; 315200 lbs. screenings.

76. For the month of March, 1902?

A. 144000 lbs. breeze; 209500 lbs. screenings.

1728 77. For the month of April, 1902?

A. There are screenings and mine run and breeze—three different kinds, in April, and used other places—for two different purposes.

78. What, if any difference appears in the accounting of breeze and screenings for the month of April, 1902, as compared with the corresponding account for the preceding months?

Objected to by complainant as immaterial and irrelevant.

By the MASTER: Answer subject to the objection.

A. The breeze is the same, and the mine run is different coal, and used for other purposes, and we are using the screenings for other purposes.

79. Then instead of having two columns that covered those items, as was the case in the preceding months, for April you have three, have you?

A. Yes sir.

80. You say the screenings were used for two different purposes. For what purposes were those screenings used during the preceding months?

A. Boiler fuel.

81. And for what two purposes were they used in the month of April, 1902?

Objected to by complainant.

A. Used for boiler fuel and bench fuel.

82. Is there anything in this book before you, "Exhibit 20," to indicate the difference between that used for bench fuel and for boiler fuel?

A. Yes sir.

83. What is it?

A. Different colored ink.

84. How is it shown by the color?

A. The black is the boiler fuel and the red is the bench fuel.

85. For how many different purposes, in the month of
1729 April, 1902, did you use coal under the heading "Mine run"?

A. The same—the screenings and mine run are the same.

86. They are used for the same purposes, indicated by different colors, in the same way, are they?

A. Yes sir.

87. Is there any difference in the accounting of breeze for the month of April?

A. No sir.

88. What amount of screenings in that month was used for boiler fuel?

A. These figures will give them; I might just as well give them as to add them up.

89. Yes.

A. 80000 lbs. boiler fuel, screenings.

90. What quantity of screenings for bench fuel?

A. 235000.

91. What quantity of mine run used for boiler fuel during the same month?

A. Boiler fuel 72500.

92. And how much for bench fuel during the same month?

A. 204000.

93. And how much breeze was used for boiler fuel during that month?

A. 128000.

94. And that was used for one purpose only, was it?

A. Yes.

95. What are the amounts of those several items in the month of May, up to six o'clock on the morning of the 5th?

A. 32000 lbs. screenings, bench fuel, and 28000 screenings for boiler fuel. 20000 mine run for boiler fuel, and 45000 mine run for bench fuel. 10000 lbs. breeze.

96. That was used for boiler fuel, was it?

A. Yes sir.

By the MASTER: I think the witness having verified the totals as shown on the copy of the exhibit, they may be admitted subject to the objection.

97. Have you in your manufacturing books, or elsewhere, records showing the amount of ammonia manufactured during the period concerning which you have testified, ready for the market?

A. Yes sir.

98. In what book is that shown?

A. Store-room ledger.

1730 99. Then that does not appear either in "Exhibit 20" or "21" concerning which you have testified?

A. It's taken from these exhibits after it is in the ledger.

100. Do the items themselves appear in "Exhibit 20" or "21"?

A. No sir.

101. In what form is the ammonia disposed of, liquid or solid?

A. Liquid.

102. Through what process does it go in preparation for market after it is entered upon "Exhibit 20"?

A. Which exhibit do you mean? There are three columns.

103. I mean the final column, concentrated ammonia?

A. Goes to the storage well.

104. But through what process of manufacture does it go?

A. I don't understand.

105. Do you sell it in the form of a liquid or solid?

A. Liquid.

106. Do you sell it just as it appears in the last column of "Exhibit 20"?

A. Sell it so much per pound.

107. Per pound as a liquid?

A. Yes sir.

108. Do you weigh the liquid, or estimate it from its strength?

A. It's weighed or figured from its strength to get the number of pounds.

109. But you sell it on the basis of so many pounds?

A. Yes.

110. Do I understand your testimony to mean that the last column under the general heading "Ammonia" shows the quantity of liquid manufactured on those several days to be all of one strength?

A. No.

111. In what way, then, do you determine the strength?

A. Acids.

112 That's by test, is it?

A. Yes sir.

113. And from that you figure the number of pounds, do you?

A. Yes sir.

1731 & 1732 114. When you reduce it to pounds, does it mea in the solid or liquid state?

A. I can't tell you; I imagine it would be liquor.

Complainant's counsel objected to what the witness "imagines to mean. Objection sustained.

115. Was the mine run coal, concerning which you have testifi for the months of April and May, 1902, used for fuel the same the breeze and screenings?

A. Part of it was, yes sir.

116. That is, part of it was used under the boilers and part us for bench fuel?

A. Yes.

117. And with the exception of those two months, you used not ing for those purposes except the breeze and the screenings?

A. For boiler fuel.

118. And no mine run at all was used until the month of Apr 1902?

A. We have used it always, off and on. I don't know wheth it was put in there with the screenings or not. On back of Septe ber 1901 it shows coal—that's part mine run and part screenings.

119. But during the months concerning which you have tes fied, your records show nothing except screenings and breeze f boiler fuel?

A. I would say there wasn't mine run used.

120. But I am asking for what your record shows?

A. The records show screenings and breeze, yes sir.

By the MASTER: Do your records show you used mine run for t months of April and May, 1902?

A. Yes sir, but before that—take March, for instance, I just put under the head of "Screenings" all used for the same purpose.

(SATURDAY, *June 28th*, 1902.)

Parties met pursuant to adjournment, but by agreement a journed to meet on Tuesday morning, July 8, at the Chicago N tional Bank building, directors' room, Chicago, Illinois.

1733 United States circuit court room, Government building.

PEORIA, ILL., MONDAY, *July* 21, 1902—2 o'clock p. m.

Parties met pursuant to the call of the special master.

Present: Judge I. C. Pinkney, special master. Messrs. W. L. Irwin, E. C. Ritcher and W. T. Abbott, appearing for complainant. Mr. Henry Mansfield and Mr. F. H. Tichenor, appearing for defendant.

FRANCIS W. LITTLE, re-called on behalf of defendant, deposes and says:

Direct interrogatories by Mr. TICHENOR:

The WITNESS: There are a number of interrogatories that are not yet answered in my former testimony when I was last on the witness stand. The first one is Int. 2—page 1634. I find on examining the inspector's reports that they do not show whether or not services from the Peoria Gas Light & Coke Company's mains were in the premises when our services were laid; we have no record which shows whether or not the premises were served by the Peoria Gas Light & Coke Company at the date our services were laid.

1. The next interrogatory unanswered is # 30, p. 1640?

A. That interrogatory is, "State if it is not a fact, that at # 203 Main St., in this city, you cut off the old company's connection and connected the meter with your own pipes and have since been serving gas to that building." I find that at # 203 Main St., we did not cut off the old company's connection, but laid a new complete service of our own and supplied also new meter connections; using neither the service or meter connection of the Peoria Gas Light & Coke Company.

2. The next interrogatory is # 78, p. 1648?

—. The substance of that interrogatory is whether or not we have charged for service pipes and in what cases. I find we have
1734 never charged for a service pipe in Peoria; that propositions were made on that basis in a number of instances, but were never accepted. I find that G. R. Colburn at No. 205 North Frink St. had his service run by O'Neill & Sons and paid for it himself; all the other services put in by this company have been furnished free to the consumer.

3. Did your company have anything to do with the service, or the agreement under which it was made, at No. 205 N. Frink St.?

A. No sir.

4. Does your company regularly permit service connections to be made by plumbers or gas fitters other than those furnished by you?

A. No sir, we do not. This was a case where the Peoria Gas & Electric Company had no frontage right on the street and declined to run the service, but permitted the service to be connected, or to

speak more accurately, connected the service to its mains within a district in which it had frontage right, but had nothing further to do with it.

5. The next interrogatory unanswered according to my notes are numbers 91, 92 and 93 on page 1650.

A. The question there is "How many services has your company installed since the 1st of September 1900." Since September 1st, 1900, the Peoria Gas & Electric Company has installed 179 services.

(The MASTER:)

6. You mean by that that you have installed 179 additional new services?

Ans. New services, yes sir.

(The SAME:)

7. Not in lieu of old services?

A. No sir. Now, Mr. Tichenor, you asked me to give that by months—Interrupted.

(Mr. TICHENOR:)

8. I don't believe I care for that but if you have it there you may give the summary in months.

1735 A. In September 1900 we laid 1-2 inch service; 3-1¼ inch services and 1-1 inch service. In October 1900 we laid 1-2 inch service; 11-1¼ inch services. In November 1900 we laid 1-1¼ inch service. In December 1900 we laid 2-1¼ inch services. In January 1901 we laid 1-2 inch service. In February 1901 we laid 1-1¼ inch service. In March 1901 we laid 8-1¼ inch services; 2-2 inch services and 1-1 inch service. In May 1901 we laid 1-2 inch service and 3-1¼ inch service. In June 1901 we laid 1-2 inch service and 8-1¼ inch services. In July 1901 we laid 2-2 inch services and 4-1¼ inch services. In August 1901 we laid 7-1¼ inch services and 1-1 inch service. In September 1901 we laid 2-2 inch services; 6-1¼ inch services and 2-1 inch services. In October 1901 we laid 2-2 inch services and 5-1¼ inch services. In November 1901 we laid 11-1¼ inch services. In December 1901 we laid 1-1¼ inch service. In January 1902 we laid 2-2 inch services and 1-1¼ inch service. In February 1902 we laid 1-1¼ inch service. In March 1902 we laid 3-1¼ inch services. In April 1902 we laid 1-2 inch service; 11-1¼ inch services and 4-10 inch services. In May 1902 we laid 1-2 inch service; 12-1¼ inch services and 1-1 inch service. In June 1902 we laid 1-2 inch service; 8-1¼ inch services and 3-1 inch services and 1-3 inch service.

(The MASTER:)

9. What character of main was this 3 inch service laid to?

A. The 3 inch service is laid into the building at 325 South Washington St.—a business building; it is a very large service as they use a large amount of gas.

(Mr. TICHENOR:)

10. I think the only other information I care for now is as to the change of rates although there is another interrogatory unanswered, viz: No. 141 on page 1658.

1736 A. In answer to interrogatory No. 141, page 1658, I would state that my checks were given for the repayment on August 29, 1901, and were given to all of the Peoria stockholders of the company excepting Sumner R. Clarke, Ben Warren, Jr., and Theodore Miller.

11. Do you know why the money was not refunded to those three gentlemen whose names you mention?

A. I think the money was refunded to them directly by the Equitable Trust Co.

(The MASTER:)

12. You say you think that, do you know it to be the fact?

A. I don't know it personally, no sir.

Now with regard to interrogatory 210, page 1671, the same interrogatory being practically repeated at No. 235, page 1676, the question refers to statements or accounting of the bills between the company-s. I have those statements if you desire them—(witness hands statements to counsel) the June bills have not yet been made up. The statement is up to the first of June. (Said statements, seven in number, are marked Exhibit 33 for identification.)

13. Now, interrogatory No. 251, page 1679.

A. I find on March 11, 1900, the rates fixed by the Peoria Gas & Electric Co. were gross for light $1.00 per thousand cubic feet and for fuel 75 cents per thousand cubic feet, each rate being subject to a discount of ten cents in case the bills were paid at the office of the company on or before the 10th day of the month following that at which the gas was used, making the net rate 90 cents and 65 cents respectively. This rate was changed on March 21, 1900, to 40 cents gross and 30 cents net for both light and fuel. Another rate was announced on July 30, 1900, effective September 1, 1900, the

1737 rates being for light $1.25 and for fuel 85 cents gross with a discount of ten cents if paid on or before the 10th, making the net rates $1.15 and 75 cents respectively. On November 1st, 1901, the rate was again changed to $1.10 gross, $1.00 net for both light and fuel which rate has prevailed since that time.

You asked me, I believe, when on the stand before, to bring with me the contract with the Peoria Gas Light & Coke Co. and I have it here if you care to examine it.

(Witness hands contract to counsel.)

The MASTER: Do you desire to offer in evidence the statements produced by Mr. Little, Mr. Tichenor?

Mr. TICHENOR: I don't know that I do; we have all of it in the record now except the statements showing the amount of repairs, etc.; I don't know whether that has any bearing or not.

The MASTER: Then you offer in evidence that portion of the statements in connection with the testimony of this witness, do you?

Mr. TICHENOR: Yes sir. On behalf of the defendant I now offer in evidence in connection with the testimony of this witness the statements which he has identified marked Exhibit 33, and I also offer in evidence, in connection with the testimony of this witness, the contract or agreement which he has identified between the complainant company and the Peoria Gas Light & Coke Co. dated October 21, 1901, the same being marked Exhibit 32, and ask leave to substitute for the original a copy thereof for the record.

Said seven statements marked Exhibit 33 and said contract marked Exhibit 32 are in the words and figures following, to-wit:

1737*a* EXHIBIT "33." I. C. Pinkney, Master.

(7 statements.)

PEORIA, ILL., *December* 1, 1901.

Peoria Gas Light and Coke Co., Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

Labor and Material Supplied from October 24 *to November* 30, 1901

	Labor.	Material.	
Connecting old stoves	29.30	32.58	61.88
Care for complaints	105.88	4.32	110.20
Removing and setting old meters	63.60	24.59	88.19
Repairing meters	48.58	14.70	63.28
Running new services	110.91	129.08	239.99
Extdg. servcs. for set. meters	9.04	12.44	21.48
Setting new stoves	17.36	18.81	36.17
Repairing services	23.65	17.39	41.04
	408.32	253.91	$662.23
Nov. 23. 1 rubber stamp	.....	1.25	1.25
	408.32	255.16	$663.48

1737b (EXHIBIT "33"—Continued.)

PEORIA, ILL., *January* 1, 1902.

Peoria Gas Light and Coke Co., Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

Labor and Material Supplied During December, 1901.

	Labor.	Material.	
Connecting old stoves	23.70	13.47	37.17
Care for complaints	145.91	53.54	199.45
Removing & setting old meters	63.75	12.01	75.76
Repairing meters	49.87	14.34	64.21
Running new services	42.76	42.45	85.21
Ext/g. servcs. for set. meters	.....	7.89	7.89
Setting new stoves	15.43	12.06	27.49
Repair services	6.35	.....	6.35
	347.77	155.76	$503.53
Dec. 16. 1 hot plate	.....	2.50	.....
17. 12 independent cocks	.....	3.00	5.50
	347.77	161.26	$509.03

1737c (EXHIBIT "33"—Continued.)

PEORIA, ILL., *February* 1, 1902.

Peoria Gas Light and Coke Co., Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

Labor and Material Supplied During January, 1902.

	Labor.	Material.	
Connecting old stoves	14.76	5.99	20.75
Care for complaints	110.79	15.21	126.00
Removing and setting old meters.	69.24	15.31	84.55
Repairing meters	67.56	5.40	72.96
Running new services	.25	.....	.25
Extdg. serves. for set. meters	4.48	10.58	15.06
Setting new stoves	4.85	2.15	7.00
Repairing services	.....	.....	.....
Pump drips	7.50	.....	7.50
Setting new meters	8.32	37.80	46.12
Getting measures of mains	33.59	....	33.59
	341.34	92.44	$413.78

1737d (EXHIBIT "33"—Continued.)

PEORIA, ILL., *March* 1, 1902.

Peoria Gas Light and Coke Co., Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

Labor and Material Furnished During Month of February, 1902.

	Labor.	Material.	
Setting new stoves	8.08	4.42	12.50
Removing & setting meters	54.05	10.20	64.25
Connecting old stoves	15.57	13.82	29.39
Caring for complaints	126.89	11.00	137.89
Running new services	6.52	.....	6.52
Extdg. serves. for set. meters	4.22	6.82	11.04
Repairing services	.50	.....	.50
Repairing meters	82.90	25.94	108.84
Setting new meters	.52	47.71	48.23
Taking measurements of mains	20.08	.....	20.08
Loading coke and tar	123.98	.....	123.98
	443.31	119.91	$563.22
Feb. 5. 1 stove	.....	10.00	10.00
	443.31	129.91	$573.22

1737*e* (EXHIBIT "33"—Continued.)

PEORIA, ILL., *April* 1, 1902.

Peoria Gas Light and Coke Co., Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

Labor and Material Furnished During Month of March, 1902.

	Labor.	Material.	
Setting new stoves	15.36	9.45	24.81
Removing & setting meters	54.39	1.55	55.94
Connecting old stoves	18.68	10.86	29.54
Caring for complaints	76.96	18.73	95.69
Running new services	55.37	43.33	98.70
Extdg. servcs. for set. meters	1.16	.58	1.74
Repairing services	3.75	.....	3.75
Repairing meters	72.93	17.54	90.47
Setting new meters	2.46	36.08	38.54
Taking measurements of mains	49.68	.....	49.68
Loading coke and tar	299.04	.....	299.04
	649.78	138.12	787.90
Mar. 4. 1 stove	.....	10.00	10.00
	649.78	148.12	$797.90

737f (EXHIBIT "33"—Continued.)

PEORIA, ILL., *May* 1, 1902.

Peoria Gas Light & Coke Co., Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

Labor and Material Furnished During Month of April, 1902.

	Labor.	Materials.	
Setting new stoves	31.73	23.34	55.07
Removing and setting meters	50.94	12.67	63.61
Connecting old stoves	35.58	34.86	70.44
Caring for complaints	64.28	8.16	72.44
Running new services	121.51	178.07	298.58
Extdg. servcs. for set. meters	2.81	11.51	14.32
Repairing services	5.25	1.53	6.78
Repairing meters	47.60	10.16	57.76
Setting new meters	4.14	114.84	118.98
Taking measurements of mains	49.81	12.30	62.11
Loading coke and tar	8.38	21.87	30.25
Loading car 12" pipe	13.50	.....	13.50
	434.53	429.31	863.84
April 11. 1 stove	.....	14.00	14.00
	434.53	443.31	$877.84

1737*g* (EXHIBIT "33"—Continued.)

PEORIA, ILL., *June* 1, 1902.

Peoria Gas Light and Coke Company, Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

Labor and Material Furnished During Month of May, 1902.

	Labor.	Material.	
Setting new stoves	59.79	184.30	244.09
Removing and setting meters	63.76	9.62	73.38
Connecting old stoves	52.83	61.90	114.73
Caring for complaints	70.65	7.13	77.78
Running new services	357.53	256.56	614.09
Extdg. serves. for setting meters	9.43	32.69	42.12
Repairing services	18.74	11.82	30.56
Repairing meters	43.85	24.38	68.23
Setting new meters	8.00	186.95	194.95
Loading coke and tar	.85	.....	.85
	685.53	775.35	1460.78
May 6. 1 stove	.....	12.50	.....
" 14. 1 hot plate	.....	2.50	.....
" 27. 1 stove	.....	9.00	24.00
	685.53	799.35	$1484.78

1737*h* EXHIBIT "32." I. C. Pinkney, Master.

This agreement, made this twenty-first day of October, A. D. 1901, by and between the Peoria Gas Light & Coke Company, a corporation organized under the laws of the State of Illinois, party of the first part, and the Peoria Gas and Electric Company, a corporation organized under the laws of the State of Illinois, party of the second part, witnesseth: That

Whereas, the said party of the first part is engaged in the business of manufacturing and selling gas in the city of Peoria, Illinois, and has a large and established business, and a large number of consumers dependent upon its service; and

Whereas, a large amount of the machinery and apparatus of the said first party has become in bad condition and repair by reason of

is long continued use in the manufacture of gas, and will require he expenditure of a large amount of money in the renewal and repair of certain parts of its machinery and apparatus, in order to continue the manufacture and sale of gas economically; and

Whereas, the said party of the second part is the owner of a new gas plant located in the city of Peoria, Illinois, of ample capacity to supply not only the consumers of the party of the second part, but also the consumers of said party of the first part, and said party of the second part is willing to enter into a contract to sell gas to said party of the first part upon the terms and conditions herein set forth:

Now, therefore, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto covenant, contract and agree as follows:

1737*i* The said party of the second part agrees that it will manufacture and furnish to the said party of the first part, a sufficient amount of gas to supply the consumers and customers of the said party of the first part, during the period of this contract and that it will commence supplying gas hereunder at the earliest practicable moment, and not later than November 1, 1901.

It is understood and agreed, that the gas so furnished shall be of good quality and of not less than sixteen candle power at the station meter of the party of the first part.

Said party of the first part covenants and agrees that it will pay for all gas so furnished at the rate of seventy-five cents per thousand cubic feet, with the exception that all leakage or loss of gas between the station meter of the gas plant of the party of the first part and the delivery thereof to the consumers of the said party of the first part, shall be accounted and paid for at the rate of fifty cents per thousand cubic feet of gas so furnished. The amount of leakage or loss of gas shall be determined by the difference between the amount registered by the station meter in the plant of the party of the first part and the aggregate amount registered by the several meters which are or may be set for consumers of the said party of the first part.

It is understood and agreed, that said party of the second part shall have free access to the plant and premises of the party of the first part, for the purpose of reading, examining, testing or repairing the station meter of the party of the first part, and shall also have free access to the several meters of the consumers of the said party of the first part, with the right to read, take the measure, examine, test, repair, remove and replace any or all of the said meters for the purpose of determining the amount of gas furnished under this contract, as well as the leakage or loss of gas as herein provided.

1737*j* It is further covenanted and agreed, that the said party of the second part shall have the right to enter upon the premises of the said party of the first part, and lay all necessary pipes

and make all necessary connections with the meters and gas mains of the Peoria Gas Light & Coke Company in its plant in the city of Peoria, and said party of the first part especially covenants and agrees, as one of the moving considerations of this contract, that whenever in the judgment of the party of the second part, it shall be necessary or desireable to test, repair, remove or replace any meter, service pipe or main belonging to the said party of the first part, in order to determine the amount of gas delivered to said party of the first part, or to prevent loss or leakage of the same, the said party of the second part shall have full right, power, license and authority to make such examination, repair, removal and replacement from time to time, and said examinations, repairs, removals or replacements shall be made at the expense of the said first party. Said party of the second part covenants and agrees, however, that all such examinations, repairs, removals or replacements made at the instance and initiative of the said party of the second part, shall be made and billed to said party of the first part at the actual cost thereof.

Said party of the second part further covenants, that the said party of the second part will make any examinations, repairs, removals, replacements and extensions of the service pipes, mains, etc. which may be desired by the said party of the first part at actual cost plus three per cent. for superintendence, and in consideration thereof, said party of the first part covenants that it will give to said party of the second part all of its work of examining, testing, repairing, renewal, replacement, extension of service pipes and mains, including the purchase and furnishing of all supplies, such as
1737*k* materials, service pipes, mains and pipes of every character, and all things pertaining to the construction, maintenance and operation of its plant, excepting only the purchase and sale of gas stoves and ranges.

Said party of the second part agrees to turn over to said party of the first part, monthly, its readings of the meters covered by this contract, in convenient form, for the use of said party of the first part; and said party of the first part agrees that payment shall be made under this contract, for all gas furnished, on or before the 15th day of each and every month for all gas shown by the reading of the meters and turned in to said party of the first part on or before the 5th day of each and every month.

It is understood and agreed that this contract shall be and continue in full force for a term of ten years from this date. Provided, however, that either party hereto shall have the right to terminate this contract at any time prior to the expiration of two years from the date hereof, upon giving six (6) months' notice in writing to the other party of its intention so to do.

This contract is made by authority of the board of directors of the parties hereto.

In witness whereof, the parties hereto have caused these presents

to be executed by their proper officers and their respective corporate seals to be hereto affixed, the day and year first above written.

PEORIA GAS LIGHT & COKE COMPANY,
By W. B. McKINLEY, *Its President.*

Attest:
W. T. ABBOTT, *Secretary.*

PEORIA GAS AND ELECTRIC COMPANY,
By F. W. LITTLE, *Its President.*

T. J. MILLER, *Secretary.*

1738 14. Do you know the regular price charged at boarding stables in Peoria for the keeping and care of a horse and vehicle?

A. As a general proposition it is $15.00 per month for one horse and a buggy or wagon.

FREDERICK EGNER called on behalf of defendant, being first duly sworn, deposes and says.

Direct interrogatories by Mr. TICHENOR:

1. State your name and place of residence.

A. Frederick Egner, Morristown, New Jersey.

2. What is your business?

Ans. Consulting gas engineer.

3. For how long a period of time have you been engaged in the gas business?

Ans. About thirty years.

4. In what capacities or lines of duty have you been occupied during that period of time?

A. Everything in the gas business except errand boy; I have acted as engineer, superintendent, laborer, pipe fitter, president of a gas company—in fact, everything except errand boy.

5. With what companies, if any, in the United States have you been connected and in what capacities?

A. I was first with the Metropolitan Gas Light Co. of New York city; I entered their service in the pipe shop as a pipe fitter and extra engineer; about three weeks after that I was made assistant foreman of the retort house, and about two weeks after that assistant engineer, or assistant superintendent of the works; I was with them then about a year and a half when I was offered a position as assistant superintendent of the New York Gas Light Co. of New York city; I was with them a little over four years as assistant superintendent in general charge of the works at night and then went to Norfolk, Va.

1739 6. How long were you at Norfolk, Va., and what were you doing there?

A. I went there as engineer and superintendent of a company

and was there the first time about five years, from 1877 to 1883—not quite five years. I was invited to come back in 1892, I think it was, and was with them then until 1894, something like that, or the middle of 1895, in the same capacity. The second time I was with them they had an electric plant connected with their gas plant and I was engineer of the gas and electric plant too.

7. With what company or companies were you associated during the period that elapsed between those two engagements with the Norfolk Company?

A. I went from Norfolk to Chicago as engineer of the Peoples' Gas Light & Coke Co. and was there about four months; from there I went to St. Louis, Mo., as superintendent of the Laclede Gas Light Co. and was with them about nine years, that is, with the old company and the consolidated company after it became consolidated.

8. All the time in that capacity?

A. Yes sir. Then I came on to New York and was chief engineer of the Standard Gas Light Co. of New York city for about five months—rebuilding the works in that time.

9. Any others?

A. No. Then I started in business on my own account and that brings it up to the time I went back to Norfolk the second time.

10. State whether or not you are familiar with the gas industry as it has been carried on in t-e United States for the past thirty years including the various processes and the different devices, apparatus and mechanical appliances used in the business.

A. Yes sir, I am.

11. State whether or not you have ever examined and in-
1740 vestigated any gas plants other than those with which you have been associated, or engaged, as you have already testified—I am speaking now with reference to this country.

A. Quite a number; I have built several and examined quite a good many.

12. Where have you built gas works?

A. Texarkana, Ark.—a small coal gas works; Dover, N. H., small water gas works last summer; outside of the works I have been engaged with and built those are the only ones I have built.

13. What kind of gas did those companies which you have named and with which you have been associated manufacture?

A. Coal gas, water gas and oil gas.

14. Are you, or are you not, familiar with all of those different processes including the various devices and appliances necessary for the production of gas?

A. All of them.

15. What, if any, construction work in a general way did you do for the companies with which you have been associated?

A. At the Norfolk works I put in two different kinds of water gas apparatus—that was in the early days of water gas—the Allen and Harris process and the Lowe process; at Chicago I designed and superintended the erection of a water gas process, the largest

ever built in this world, which was afterwards known as the Springer process. I will have to explain something about that. The Springer process existed before that, but it was a failure, and I reconstructed that process and it is in use today in places on my plans, but it was always called the Springer process; plenty of people know it is my design.

16. Did you do any construction work for the Standard Gas Co. of New York?

A. At the Laclede we have not got through there yet; at
1741 the local works I built a new gas plant, such as is used for supplying cars, etc., built a new plant for that there and built new water gas works and built a coal gas works there on what is called the inclined retort principle, at that time new in this country, and rebuilt some of the coal gas apparatus, besides gas holders and such things of course; then at the Standard works in New York I practically rebuilt the whole plant and made it double capacity—changed the whole plant.

17. What are some of the principal works in this country which you have examined and investigated outside of those companies with which you have been associated as you have testified?

A. All *eht* gas works in New York city excepting one; three gas works in the city of Brooklyn; also in Cincinnati—that is a notable work,—Columbus, Ohio, Allegheny and Pittsburg in Pennsylvania, San Francisco, California—a couple of works, two companies there; Portland, Oregon, Seattle Washington, Vancouver, British Columbia, Boston, Mass., Cambridge and Brookline, Mass., Providenc, R. I., Hartford and New Haven, Conn.—really, I have examined about 140 odd works and I cannot tell you the names of all of them without consulting memorandum; I have seen over 150 all together.

18. State whether or not you have ever made any investigation of gas plants in any other country except the United States?

A. Yes sir, I have made examinations of gas works in Europe, in Ireland, Scotland, England, France, Germany and Austria.

19. On how many different occasions?

A. I was twice in England and Scotland but only once over the works in the other countries.

Q. When was the occasion of your first visit there for that purpose?

A. In March, April and May, five years ago.

1742 21. What portion of that time did you devote to the investigation of gas plants?

A. All of my time—about 6 weeks.

22. When were you there again?

A. About four months ago; in March I went over again and came back in May this year.

23. Over what territory did your investigations extend on the occasion of your first visit there?

A. I went to Salford in England, south of Manchester; Huddlefield—Interrupted.

24. I do not care about the names of all the places if you will tell us in a general way what territory you covered?

A. The most notable works in England; in Scotland, also; one works in Ireland at Belfast; in Rheims, France; a number of them in Germany, the most notable ones and at Vienna in Austria.

25. Did your second visit cover substantially the same territory?

A. No sir, only in England and more of it at that time: I did not leave England and Scotland; I was in Edinburg but that is all the place I went to in Scotland; I was in England at a number of cities and at Edinburg.

26. For what purpose did you make those two trips to Europe?

A. They were simply for the purpose of study, you might say; I tried to see the condition of the gas business in those countries, what progress and advances had been made in the line of my profession with more special reference to inquire into the progress of what is now known as the inclined retort system for making coal gas.

27. To what extent did you investigate and examine the various plants with which you came in contact on each of those trips, that is, with what degree of thoroughness?

1743 A. Most of those plants I examined very thoroughly even to seeing the books of accounts; I have in some cases seen the accounts of companies where the books were locked and kept in a safe, the safe being opened for my special examination.

28. State whether or not you are familiar with the gas associations, or associations of gas engineers, in America?

A. I believe I know pretty nearly all of them.

29. With what, if any, of those have you been officially connected?

A. First of all with the Western Gas Association, then with the American Gas Association; I am a member of both now; I visited the meetings of the Ohio—Interrupted.

30. My question was how you have been connected with them officially if at all?

A. I have served in minor positions, such as director, etc. and president of the Western Association and I was a director, or member of the council, as they call it, of the American Gas Association.

31. How long ago were you president of the Western Gas Association?

Ans. 11 years ago.

32. State whether or not you have ever made any investigation of the gas industry in the city of Peoria?

Ans. Yes sir.

33. When for the first time?

Ans. About 10 years ago.

34. For how long a period of time were you here on that occasion?

Ans. About 3 weeks, as nearly as I can remember.

35. State whether or not on that occasion you familiarized yourself with the state of the gas business in Peoria, including the condition of the development of the plant, its operation, the apparatus

which it was employing, and substantially the territory which it was covering?

Objected to as immaterial and irrelevant.

1744 A. Yes sir.

36. At that time, there was only one gas company in Peoria, was there?

A. So far as I know, I know of no other.

37. State whether or not you know the complainant company, the gas company engaged in this litigation?

A. I know nothing about it except what I have heard since I have come here, and I had a letter, of course, inviting me to come here.

38. State whether or not you know the construction and the various kinds of apparatus, buildings, etc., comprising the manufacturing plant of The Peoria Gas & Electric Company, the complainant in this case.

A. I have read a description of the works in a report, volume 3, I think it was, commencing on page 742, I think, or something like that.

39. You are referring to the record in this case, are you not?

A. Yes sir, the type written record, that is where I saw the description of the works, and I read it very carefully.

40. Do you remember in whose testimony all of those details were set out?

A. The one I read was by Mr. Little, if I am not mistaken.

41. State whether or not you also know the pipe system of complainant company as laid in the streets and alleys of the city of Peoria, both as to aggregate, sizes, etc.?

A. I have read an account of that too in the paper marked "Exhibit 20" and Mr. Mansfield has taken me over the ground and I have also walked over it and I know something about it from the time I was here before.

42. Do you remember the number of retorts in a bench in this plant as shown by the record in this case?

1745 A. Yes sir, 9 retorts to a bench, 7 benches of 9's, full depth regenerative furnaces, made by the Parker-Russell Manufacturing Co.

43. State whether or not you are familiar with that style of furnace, if so, for how long a period of time have you known it?

A. I am quite familiar with it.

44. State whether or not you are also familiar with all the other apparatus appliances, mechanical devices, etc., entering into the plant of complainant company?

A. So far as they are described in the record in this case, yes sir; I might say I am quite familiar with other apparatus, the same as it is there, that is I suppose it is the same.

45. You know the apparatus by name and description?

A. Yes, I know what it is according to that.

46. How long is it since regenerative or recuperative furnaces f gas making came into general use?

A. The generative furnace was first introduced in this country i 1875 or about that time—I will not be sure whether it was one ye earlier or later—at the works of the Metropolitan Gas Light Com pany in New York city—Interrupted.

Complainant objects to the answer as not responsive.

The MASTER: It may stand. Go on with your answer.

The WITNESS: The regenerative part of the generative furna was introduced only a few years later but I could not say as to th date.

47. What is the characteristic feature of each of those devices which you have referred?

A. The two are practicaly one, though one was introduced firs the generative furnace is a furnace in which the fuel is kept qui deep anyhow over two or three feet and as high as 5 and
1746 feet, and air passing through that fuel decomposes it, the oxyge and carbon forming molecules of carbon—carbonic oxide an the air goes along with it; that gas is then burned in the combu tion chamber of the bench by the admission of air from the outside at first, with the generative furnace air would only be admitted righ near the top, but with the recuperative furnace the air is heated b the escaping gas or combustion that passes around the retort, passin through a number of channels built in the setting and betwee those channels air passing in back and forth and the heat passin on the outside through that chamber enters on top and thereby th air being heated there is some saving affected; the channel work i called the recuperative part, the part that holds the fuel is called th generative and they call the two together a recuperative furnace i a gas works.

48. How does this furnace, which you have just described, com pare in economy of operation and result with the furnace which pre ceded it for the same purpose?

A. We used to burn with the old style furnace anywhere from to ½ of the coke reduced and now they will burn from about ⅛ t perhaps less than ¼ of the coke reduced, so you see the saving i quite considerable.

49. What is the comparative life of the two systems of furnaces the old and the modern?

A. That is rather an unfair question, I think for the modern fur nace; the old furnace frequently lasted longer than the modern furnace does.

50. The question I intended to ask you was with reference to the life of the retorts, not the furnace, in the old system as compared with the new?

A. In the new system a retort will during its life produce a great deal more gas than with the old furnace—Interrupted.

Complainant objects to the answer as not responsive.

1747 The MASTER: It is not responsive to the question.

The WITNESS: As a rule, with the new furnace, the retorts do not last as long as in the old.

51. What is their life, based upon the gas produced?

A. The gas produced is nearly double with the new than with the old system.

52. Are you able to state about the life of the new retorts in use at the present day?

A. With good management, a retort will last easily two years—three years, perhaps, and you can ruin it in one night.

53. In what manner may it be so quickly destroyed—under what conditions?

A. The retorts being very hot, for instance, if a careless fireman lets the fuel run down the cold air rushes up through the furnace and the retorts of course being very hot get cooled off quickly and cracked, sometimes fall to pieces; if that happens a few times the retorts are gone.

54. What is the life of the furnace itself in the new system as compared with the life of the old furnace?

Objected to as already asked and answered.

A. I had in my mind before the life of the retorts. Now, the furnace proper will last longer than the old furnace; it will sometimes allow two or three sets of retorts over the same furnace, and you could never do that with the old furnace.

55. In a gas plant of the size of that of complainant company, in your judgment, what number of retorts should be placed in a bench in order to be operated most economically?

A. In my opinion, taking everything into consideration, I would, in a small city like Peoria, use what we call benches of 6's; in a large city, benches of 9's are probably better, but in a small city I would prefer benches of 6's.

1748 56. What is your reason for stating that benches of 6's are preferable to benches of 9's?

A. It is because in the course of business you have to increase the make of the volume of gas and decrease it in the fall of the year and spring of the year and sometimes in the intervening period, and at a coal gas works you must miss charges, as we call it, or let down the fire of a bench and with benches of 6's the unit is not so great, for instance, if we had 4 benches only of 9's and we have to let down one bench, we drop one fourth of our producing capacity right there; we may not want to drop as much as that and if we should drop a bench of 6's instead of a bench of 9's it would not be so bad, perhaps, and so in firing up again; that is the technical reason why I would prefer in a city like this 6's rather than 9's.

57. State whether or not you are familiar with the life of the

various kinds of apparatus used in the works of complainant company?

A. I know as to the life of nearly all of them except the Chollar washer; I know what that is but I don't know how long it will last.

58. State whether or not the Chollar washer represents the best and most advanced ideas based upon economy in the gas business?

A. It is the cheapest as to price but not the most economical as to use.

59. Why not?

A. In extracting ammonia, the gas passes through water and the ammonia is pretty thoroughly extracted but not so strong a liquor is obtained as with some other apparatus, that of course requires more fuel when concentrating or driving off the ammonia; it is a trifle, anyway, in either case; it don't amount to a great
1749 deal.

60. State whether or not there is any other portion of complainant's plant that is not the best or latest based upon the standpoint of economy?

A. In my opinion if they had standard washer scrubbers, so called it would be very much better, that is, No. 1; as to the producing capacity at the generating plant, I would certainly use the inclined retort system; it has been known for years and it is certainly better than the horizontal hand stoker retort.

61. State to what extent the inclined retort system has been used either in this country or Europe or in both?

A. In this country it has been used now for about two years at Louisville, Ky. to make all the coal gas made there; it has also been used by the Kings County Gas & Illuminating Company at Bay Ridge in Brooklyn, for about two years; it is coming into more extended use—that is not answering your question, though; you asked how long it had been used. We had one bench of inclined retorts in St. Louis in use for about 2 years in 1889 and 1890, that is, one bench with 5 retorts.

62. How long is it since the inclined retort system was first introduced into this country?

A. In 1889, I think—1888 or 1899, there was one bench at St. Louis, but the works were not under my charge at that time.

63. Where was the system first used, if you know?

A. The earliest record of it is in England in 1804; it then seemed to drop out of sight until Andrey Coze of France revived it, improved it and made a success of it.

64. How long ago was that?

Ans. About 15 years ago.

65. To what extent is that system in use at the present time in Europe?

A. There are at present 67 gas works using it in size
1750 smaller than the Peoria gas plant; the daily make of gas—that would be a better statement maybe—is over 107 million

cubic feet per day in England; in Germany and France—I have data on that head but I have not it in my mind now—they use it in a great many works in Germany—in Berlin in 5 or 6 works, in Vienna they built entirely new works there about 5 years ago over 1600 retorts, all inclined, no other; in Bremen, Switzerland, and Dresden—I really could not tell you all but a great many; they would not build any others hardly.

66. What advantages has the inclined retort system over the horizontal?

A. Instead of having to lift the coal by hand and shovel it into the retorts, or put it in with scoops, and after the gas is driven off pull it out with rakes, if hand stoking is used, the coal is elevated high enough to be put into the inclined retorts; the retorts, by the way, set at an angle of about 32 degrees and the coal is charged in at the upper end and rolls down to a stop plate and fills the whole retort; then, when the gas is driven off, the lower door is opened, the stop plate removed, and, as a general thing, instead of having to rake the coke out it drops out of the retort; sometimes, when a retort has been in use 3 or 4 years, it will not drop out and they have to shove and rod it—what they technically term tickle it—at any rate, it is not any such work as has to be done at ordinary coal gas works; any man could do the work; any of you gentlemen could go there and discharge a retort of coke with that inclined retort system.

67. Is the same true of charging the retorts?

A. I have seen a device at the Granton works in Edinburg, Scotland, where I think a child of six could put 800 pounds of coal into a retort after the apparatus is set to the retort in about four
1751 seconds; of course, a child could not set a wagon there but so far as putting the charge in a child could put the coal into the retort.

68. What if any effect does that have upon the question of the economical production of gas?

A. It lightens the labor to that extent; almost any ordinary working man can do the work which is not the case now.

69. Does it tend to economy in gas production or otherwise?

A. It tends to economy, of course; it will reduce the price of making gas in the way of labor anywhere from 45 to 65 per cent.

(The MASTER:)

70. In other words, it does away with the stokers and shovelers?

A. Yes sir, that laborious work; you have to have men, of course, but any man can do the work; it is not killing to do the work; any man that is able bodied can do the work.

(Mr. TICHENOR:)

71. Are you able to state what the saving in the cost of manufacture per thousand cubic feet would be by the use of this system in a city of the size of Peoria?

A. I have never done it, I could not say.

72. What in your opinion would be the saving, if any, by the use of this system?

Objected to as incompetent, immaterial because the witness has not qualified himself to answer in view of his answer to the preceding interrogatory and because the question put does not contain all the elements necessary.

The MASTER: The witness may answer subject to the objection.

A. I should judge it would be about 5 to 6 cents per thousand cubic feet.

(The MASTER:)

73. Do you mean by that the total capacity of the plant or total daily manufacture?

A. For each 1000 feet manufactured.

74. Irrespective of its capacity?

1752 A. Yes sir, that is to say, from its minimum capacity up to its maximum capacity.

(Mr. TICHENOR:)

75. What, if you know, is the life of a gas holder regularly in service as they are in this country?

A. I have seen some that have been operated for over 40 years; I really could not say what the life would be; I have never seen any work out yet; I have seen some taken down and larger built but I have seen some in operation 40 years—I know of one now that has been in operation about that long.

76. What is the life of the engines, exhausters and apparatus of that kind used in gas production as shown by the record in this case that are embodied in the complainant's plant?

A. I have never seen one worn out yet and I have seen them run for years; I suppose they do wear out but I have not seen any wear out.

77. How large an engine is necessary to do the work of a plant of the size of the complainant company?

A. Judging from the amount of gas made I should say a 10 horse power engine and an exhauster 8 to 10 horse power.

78. How long do you know of any engines of that description in that service having been operated?

A. I could hardly state that; I have seen quite a number; in my own experience at the Laclede works we have had one engine run through the nine years I was there and it was running long before I came there, and I am pretty certain it is running today and I am out there over 10 years.

79. To what unusual strain or burden are those engines, and the machinery which they carry, subjected as compared with engines in other lines of work?

A. They have no unusual strain or burden; their load is very even compared with any factory engine.

1753 80. What if any changes, either by way of increase or diminution, have there been in the gas industries in this country within the last 30 or 40 years which effect the hazards necessarily incident to the business?

A. The only thing I know of that is a real hazard is electrolysis from street railway operation; I will also say the ignorance of city councils in granting opposition franchises is the chief hazard of all gas companies; you do away with that and you will do away with everything else worth considering almost—in fact everything.

81. What are the hazards connected with the gas industry aside from that as compared with the hazards in other lines of business?

Objected to because the witness is not qualified to answer and also as incompetent, irrelevant and immaterial.

The MASTER: I don't think it competent, but the witness may answer subject to the objection.

A. I think the gas business is one of the safest things on earth.

82. What is your reason for declaring it extraordinarily safe?

A. The absence in my experience of accidents or destruction of works. For instance, take a retort house, there is no fire in a retort house, I never knew of a retort house taking fire except now and then in a country works where it has a wooden roof that ought not to be there; with a purifying house I really don't know where there is any hazard; I have known a gas holder to burn up or blow up; in one case—stop me if I say what I ought not to.

Mr. RITCHER: We only want you to tell the truth.

The WITNESS: You may depend on that; I will say nothing but the truth if I know it. One or two gas holders have been

1754 blown up by the anxiety of the general manager to see what kind of gas he made when he first started; so I have been told, I don't know it of my own knowledge; there was a holder blown up at St. Louis or burned up, through neglect I always said; I don't really know of any other; with reference to the purifying house in all of my experience in all this country, I only know of one blown up, and that was by the ill feeling of a man who ought to have been killed but he was not—his hair was not signed; I don't know of anything that has less risk about it than gas works; if I had any money to invest, I would certainly invest it in a gas works.

83. I don't care about that.

A. I beg your pardon if I have gone too far.

84. State whether or not gas in itself is explosive?

A. No sir.

85. What would be the effect, if you know, of opening a gas holder and igniting the escaping gas?

A. It would burn, the gas holder would go down a-d keep on burning according to where the hole would be.

86. Would there be any explosion?

A. None at all if there was nothing but gas in the holder.

87. In this case, to which you refer in St. Louis, was that an explosion or burning?

A. It was a burning—no explosion about it in my opinion.

88. What was the condition of the improvements in the immediate vicinity of that gas holder after it had burned?

A. There was a wooden fence about 15 feet from it that was not injured, and the windows were not cracked in a house across a narrow street from it, and people were all around it and nobody was hurt.

89. To what unusual conditions are the buildings and those parts of the construction of a gas plant exposed that tend to hasten
1755 its destruction as compared with buildings in other industries?

A. The retort house, the roof of which is usually iron, slate or iron or tile, is of course subject to the action of the steam and sulphurous fumes from the quenched coke and it attacks the iron and gradually wastes it, but I have never seen any worn out yet; eventually it will wear out, of course, but I have seen some over 30 or 40 years in use and it was either taken down or is still there; then in the retort house sometimes the nails, that the slate is fastened with, become oxidized and it has to be relaid; that may happen in 10 or 12 years; that would have to be attended to once in awhile, not all over but in places. In the purifying house I don't know of anything specially more than in any other manufacturing building; the retort house roof is the only thing I can think of that would be subject to any extra wearing out and that only to the extent I have stated.

90. What do you say of the purifying boxes themselves including the covers?

A. The covers, if not attended to carefully, will rust out comparatively very quickly; it depends a great deal on the care; I have taken charge of works in which the covers were said to be rusted out, no good, I was told the last thing by the retiring superintendent that I had to have new covers but I simply had them cleaned off and painted and they were there four years and were there when I left; I don't know whether they have been in use since or not; I have known of a similar case to that in St. Louis.

91. Are you able to state about the life of those parts of the purifying boxes?

A. A set of covers should certainly last ten years, but as for the boxes themselves they are practically indestructible; they are like everything else about a gas works, I have never seen any worn out;
I have taken some down that have been in use for 30 or
1756 more years, however, and sold them for scrap iron in order to get larger ones.

92. What is the ordinary life of service pipe to consumers?

A. Of course, that depends on where they are laid, what kind of soil; if they are laid in filled ground largely made up of ashes and

garbage, as you find sometimes, their life is very short, they may go in three or four years, even if they are well coated, while in ordinary soil, sand and clay, if properly coated, they will last 20 and 25 years; the majority of them will last a long time, but if you happen to strike a bad place where it has bad filling they will not last very long, especially if they are not well protected; service pipes are apt to rust out at the street curb where animals are tied if they are not properly protected, the dropping of urine from animals seeps through and rusts them out; in such places I have known pipes to rust out in 7 or 8 years but in most conditions they will last 15, 20, maybe 25 years.

93. What are the conditions in Peoria concerning the life of service pipe?

A. So far as I examined them 10 years ago and so far as I am able to judge of the ground from the excavations I have seen, I should say it was pretty good, but I could not say exactly how long they would last.

94. Did you see the ground in the streets of Peoria opened more or less during the time you were here before?

Ans. Yes sir.

95. Have you on this occasion also?

A. Yes sir, I have went to a number of openings and looked in from natural curiosity.

96. Where on this visit have you found the streets opened so they were subject to examination for such purpose?

A. On Adams street—I don't remember the names of the streets very well, but there is an opening on Adams street, a large
1757 ditch, for putting in some steam pipe, then the ditch goes through an alley there to the street above, Jefferson street I think it is, and then on that street there is an opening; I think it is also in one or two other places, but I cannot locate them very well where I have looked into ditches.

97. State whether or not wrought iron is at the present time to any extent in use for gas mains?

A. For the high pressure system of gas distribution, which is coming more in use in certain systems, wrought iron is being used, that is, it is coming into more extended use.

98. What do you mean by high pressure system?

A. I must explain there. Gas, almost universally, is sent through the main in the ground under a very low pressure, that is, a pressure equal to about maybe a column of water two or three inches in height, simply a fraction of a pound, several ounces, not over that: of late years the gas is being sent long distances through wrought iron mains under a pressure of 20 to 30 pounds, the object being to reduce the cost of laying mains as under that pressure a greater volume of gas can be sent through a small pipe than generally is now done in the large pipe with less risk of loss by leakage; cast iron mains are universally used now but wrought iron mains are coming into more use right along; I had charge of a plant

with 160 miles of wrought iron main in it varying from 12 inches down and everything below 12 inches was wrought iron in the city of New York. I could answer something about the lasting quality of that pipe.

99. I think that is all for the present. What if any change takes place in gas delivered under this high pressure, to which you have referred?

A. No perceptible change at all; I have never heard of any, but if the pressure is 200 and odd pounds in using an oil gas
1758 system as I have used it, there is a loss of illuminating power and some of volume.

100. To what distance, under this high pressure to which you have referred 20 or 30 pounds, can gas be driven without suffering any perceptible loss in candle power?

A. I have read—Interrupted.

101. Do you know?

A. Oh no I have laid a line of pipe 3 miles long but I only tested that; to speak of my own knowledge for any great distance I only know of that case in the city of New York I just spoke of; in that single case there is no perceptible difference at all, but that was not on a high pressure, that was on comparatively low pressure, about the pressure of 3 inches of water, not high pressure; I have had no experience in a single case of long distance under high pressure; I have only heard of it.

102. Do you know as a gas engineer and skilled in that industry what the effect would be upon gas of sending it long distances under a pressure of 20 or 30 pounds?

A. I have had no experience in it and could not say; I can give my information but I don't know it personally.

103. What is the extent of loss from leakage, evaporation and the like in a new plant as compared with the corresponding items in a plant that has been in use for some time?

A. It would be very little if the new plant is well put down; I have put down new works and the unaccounted for gas was practically nothing; in that system of 160 miles I have spoken of after it had been used for a few years during the time I had charge of it the unaccounted for gas was less than 1½ per cent.

104. What was it to begin with?

Ans. I don't know.

105. Did you commence the operation of that plant when it was first installed?

1759 A. No not there; I have put in new pipes but not entirely a new plant except a small plant at Texarkana; I put in 5½ miles of pipe there and I did not hear of any leakage while I was connected with that company.

106. What is the comparative loss by leakage in a new plant and an old plant?

A. I really have never compared them but it ought to be less in a new plant because when mains are laid they always are, or should

be, tested before they are covered up—that is the general practice. I laid some last summer and tested them anywhere from 10 pounds to the square inch to 30 pounds to the square inch and would not allow them to be covered until we found there was no leakage, and that was a far greater pressure than the mains would ever be subjected to with gas.

107. Was that air pressure?

A. Yes sir. I have put in 3 miles of wrought iron main in St. Louis entirely new main from the works at the foot of Howard street to —— street, 12 inch wrought iron main and got a steam air pump and put that main under heavy pressure, I don't remember how much but over 30 pounds, and I would not cover up any section of it until it was perfectly tight; of course, there could be no leakage in that. I cannot see, if the work is well done, how there could be any extraordinary leak that will happen afterwards.

108. What are some of the causes of street mains leaking?

A. The first one that occurs to me is electrolysis; then, if not laid sufficiently deep, contraction and expansion.

109. That is due to the starting of the joints is it?

A. Yes sir. Electrolysis is the principal and worst cause I know of at present.

110. Suppose from any cause a main is thrown out of align-
1760 ment does that tend to produce leaking?

A. Yes sir, laying sewers and water mains sometimes, in fact, almost always does where there are parallel gas mains; people usually don't care a straw for gas mains; they lay their pipe any way and that is often the cause of leakage to a gas pipe.

111. State whether or not it is practicable in a coal gas plant, like that of complainant company, as shown by the record in this case, to manufacture and deliver gas at consumers' meters of nearly uniform 18 candle power?

A. Yes sir, I see no reason why it is not.

112. What if any depreciation in candle power would there be between the works and the point of consumption within any distance in the city of Peoria?

A. There might be 2/10 of a candle, something like that, if any; I don't know that there would be any if the gas was well made.

113. What conditions if you know would have a tendency to depreciate the illuminating power of gas within the distance referred to?

A. If there was cold weather, deep, penetrating cold weather, that would affect it for the time being—always does; sudden coming on of very cold weather for a few days will affect it and will cause some of the hydrocarbons, or illuminants, in the gas to be precipitated, especially in exposed places.

114. State whether or not you are familiar with the comparative illuminating power of coal and water gas as they are manufactured in this country at the present time?

Ans. Yes sir.

115. What is the difference in illuminating power between 18 candle coal gas and 18 candle water gas at the point of consumption?

A. None at all, it is 18 candle power gas and 18 candle
1761 power gas is 18 candle power gas.

116. Regardless of the material from which it is made?

A. Yes sir, certainly; the term "candle power" defines what it is and candle power is well defined, the same as a pound or ounce; if I say 18 candle power gas, I mean that and nothing else; I mean gas giving illumination equal to 18 candles, therefore, if it is coal or water gas 18 candle power gas is 18 candle power gas.

117. Are you familiar with apparatus used in the gas industry by which the ammonia is reduced to a sulphate?

A. Yes, I have built it.

118. Is there such an apparatus in complainant company's plant in Peoria?

A. Not so described in the record; I did not see any account of it.

119. Was there in the old plant?

Ans. Yes sir.

120. Is there or not any advantage economically in reducing the ammonia to sulphate in a manufacturing plant?

A. Certainly there is if the plant is of sufficient size to warrant a sulphate plant; it is certainly to their advantage to have it.

121. Do you know practically what the gas consumption in the city of Peoria is at the present time?

A. Yes sir, so far as Exhibit "20" shows.

122. Is the gas consumption in the city of Peoria of sufficient magnitude to warrant the reduction of the ammonia to a sulphate form before marketing?

Objected to as incompetent and immaterial and no proper foundation laid for it; on the statement of the witness as to the basis of his knowledge and opinion; it is not based on the proper data as he refers simply to "Exhibit 20."

The MASTER: The witness has answered that if the produc-
1762 tion was sufficient an apparatus for reducing the liquor to a sulphate is desirable; this question calls for whether or not the production in this city warrants the installation of such an apparatus. The witness may answer subject to the objection.

A. I certainly think it was. (It was so 10 years ago and you sell more gas now than you did then.)

Complainant objects to that part of the foregoing answer enclosed in brackets and moves the court to exclude it.

Mr. TICHENOR: I understand the witness to have testified that he was here 10 years ago investigating that question for some three weeks or more or investigating the gas works here.

The MASTER: The answer may stand, although I doubt the competency of the witness' conclusion without any showing as to his knowledge.

123. Do you know from your knowledge and experience as a gas engineer whether or not in a plant of the size of complainant's in Peoria it is economical in manufacturing to reduce the ammonia to the form of a sulphate before marketing?

A. Yes sir.

124. Is it economical or is it not?

A. It is economical in my opinion.

125. To what extent would it affect the cost of gas production per 1000 cubic feet in a place of the size of Peoria and with the amount of gas consumption shown by the record in this case.

Objected to as incompetent, immaterial, irrelevant and because no proper foundation has been laid for the question, it lacking some elements necessary for a hypothetical question.

A. I cannot say exactly because I don't know at what price the sulphate could now be sold in Peoria, but it would affect it favorably, I think—I am certain.

126. Do you know how much is realized per ton of coal
1763 carbonized from the ammonia by-product manufactured in complainant's plant?

A. From the record, yes sir.

127. What is that amount?

A. 2 61/100 pounds per ton of coal according to the statement I read compared with the coal used as reported, at 8 cents per pound—multiply 2 61/100 by 8 cents, and you have got it—20 cents and a fraction per ton of coal.

128. State whether or not you know the amount of gas manufactured by the complainant company during the 6 months commencing November 1st, 1901?

A. I have read the record and I know according to that.

129. How much was it as shown by the record?

A. During those six months it was ninety eight million and some odd thousands, I don't remember the odd thousands, for those 6 months.

130. State whether or not you know the amount of coal and other material used in the production, and also all labor entering into the same during that period?

A. Yes sir, I do according to the record.

131. From what part of the record did you obtain that information?

Ans. "Exhibit 20."

132. State whether or not you have made a computation for the purpose of ascertaining the cost of gas to the complainant company in its holder during the 6 months, to which I have just referred, commencing with November 1, 1901?

Ans. I have.

133. What was that cost?

Objected to as incompetent, immaterial and irrelevant.

The MASTER: Is that based upon information obtained by the witness from "Exhibit 20"?

Mr. TICHENOR: Yes sir.

1764 The MASTER: The witness may answer.

A. If it is allowable, I will look at my memorandum and then will make no mistake. (Witness referring to memorandum.) Deducting residuals, or not counting residuals at all?

134. Deducting residuals—the net cost in the holder.

A. 12 23/100 cents.

135. In arriving at that result, what figures did you use?

A. I used the coal carbonized in the 6 months.

136. I am not asking for the amount but where did you get the figures you used in arriving at that result?

A. I got the figures from "Exhibit 20" in the record of this case.

137. State the details of your computation by which you arrived at the result concerning which you have testified?

A. I got from "Exhibit 20" the following figures. Coal carbonized in 6 months November 1901 to April 1902 inclusive, 19,661,220 pounds, and I divided that by figures and got the net tons 9,830 61/000; price said to be in the yard $2.80 per ton; coke reported made from this coal during the same time 14,373,829 pounds equal to 1462 pounds per ton of coal; gallons of tar reported made during same period from same coal 109,910 gallons equal to 11.18 gallons per ton of coal; ammonia reported made during same period from same coal 25,665 pounds equal to 2.61 pounds per ton of coal; coke stated to have been used by Mr. Little page 230, vol. 1, of the record in this case, 23.3 per cent.; gas made per man employed, that is, the number of men or days are given as 3,983 men or days reported, which makes 24,648 cubic feet of gas made per day's work per man which is very good; cubic feet of gas made per retort in 24 hours, on the average, 10,341 cubic feet, 9,431 retorts in action is reported; that is also very good; no other material is reported used but

1765 Youghiogheny coal only, this costing $2.80 per net ton in the yard; coke reported from the same authority salable—that is in the record somewhere not in Exhibit "20"—at $3.35 per ton; tar sold at 5 cents per gallon; ammonia at 8 cents per pound—somebody testified to that all the way through; as reported the coal yield 4.92 cubic feet of gas averaging over 17 candle power; that shows very good management—very good.

138. What is the variation over 17 candle power, if you have it?

A. I have not got it but it would average about 17½—very good; oxide of iron seems to be the gas purifying material used; the gas accounted for in the 6 months was 98,157,400 cubic feet; I have something here about the annual output but I should not read that now.

139. No.

A. According to my experience—Interrupted.

140. I don't want your experience?

A. I wanted to tell you what the price was to find the following result.

141. What have you done with the question of purification?

A. I see nothing mentioned about that here; the cost of purification I merely put in the figures here from my experience as to what it would cost to purify gas; in a good many places it runs from 1/10 of a cent to ½ cent per thousand cubic feet.

(The MASTER:)

142. What did you put it in at here?

A. At ½ cent per thousand cubic feet; I put it the highest I know of.

(Mr. TICHENOR:)

143. In making up those figures, what was the price per month allowed for stokers?

A. $70. all hands; the record states the price was from $1.50 per man to $70. per month and I took the highest which was about $2.25 per day or $70. per month.

1766 144. State whether or not in those figures you calculated anything for coal other than gas coal?

Ans. I have not.

145. Did you observe on "Exhibit 20" at the close of each month an item noted as "Screenings"?

Ans. I did.

146. How did you take that item into account in arriving at the result concerning which you have testified—what did you consider it or suppose it to be?

A. I supposed such screenings and breeze was some refuse from the coke; I didn't know that it referred to anything else; it said, "Breeze and screenings" and it was under the heading of "Coke" and I thought it was some part of the coke; I did not take account of it at all in my calculation.

147. Have you those figures in your mind so you can tell to what extent it affected the price which you have given, supposing those screenings were not a part of the coke production and that they cost from $1.15 to $1.55 per ton?

A. Yes sir, I have made some figures on that but not on this paper.

148. Can you tell from recollection what difference that would make in the figures you originally gave as to the cost of the gas per 1000 in the holder?

A. No, I don't remember now what it makes but it is inconsiderable, very small indeed; I think I made it out in per cent. of the total cost but not per 1000; I have deducted for breeze and all that. You asked me a question awhile ago and I don't believe I answered it all.

149. State whether or not under ordinary conditions in a plant like that of complainant the breeze and coke screenings are sufficient to furnish boiler fuel in a works?

A. They are in my opinion sufficient—in my experience more than sufficient.

1767 150. Suppose instead of manufacturing ninety eight millions during the time in question the quantity had been two thirds or three fourths or four fifths of that, how would that fact have affected the cost per 1000 cubic feet of the gas in the holder?

A. Not counting interest on capital invested?

151. Just simply the ground you have gone over?

A. Not materially if any.

152. Why do you say it would not have affected the cost per thousand cubic feet—state briefly the reasons for it.

A. The principal labor is, of course, in the retort house; if you start with the minimum there are 7 benches; suppose we had use for only one or two probably I would put two men on it and they would be all that would be required to make that gas and we would increase and put on another bench and put on more help, and if it decreased again we would take the men off again; we would not keep seven men when only two were necessary; we would put on just enough to do the work; the difference is only when sometimes you have to put on men and there is not quite enough for them to do. For instance, if four men would not be quite enough and five men would be too many, you would have to put on the fifth man and it would cost a little more.

153. Might not that same state of affairs exist even if you were manufacturing a very large quantity?

A. Yes sir, but not in so great a proportion, that is, it would not make so much difference in proportion you know.

154. State whether or not, as a man skilled in the gas industry, you are able to state from the output during those six months approximately what the output for the whole year would be?

A. Yes sir.

155. What would it be in this case?

A. 164,776 according to my figures.

1768 156. Under what conditions do you make that estimate, normal or abnormal, in gas consumption?

A. That would be normal, very much so; I would base that calculation where gas is used very little for domestic purposes—the real old way.

157. Are you familiar with the conditions pertaining to the distribution of gas in the city of Peoria so far as shown by the record in this case?

A. The record in this case does not seem to give much information on it; I have not been able to get much information on distribution from the record in this case.

158. You don't understand what I mean. Do you know from the record in this case the number of miles of mains, the number

of meters in the service and approximately the territory over which the gas is distributed?

Ans. Yes sir.

159. State whether or not you are able to tell the cost per thousand cubic feet of distributing gas in the city of Peoria for a full year, assuming the total output for that period to be as you have estimated?

Ans. Yes sir.

160. What would that cost per thousand cubic feet be?

Objected to as incompetent and immaterial, no proper foundation laid for it and because it does not involve the proper basis or data for such hypothetical question.

A. 15.43 cents; that is for distribution alone.

161. State whether or not that includes any items for rentals and stable expenses?

Ans. It does.

162. State the details of your computation by which you arrive at the cost you have given for distribution alone?

A. Taxes I have taken from the record, about $5500; insurance I figured on my estimate of the cost of the building one-half of one per cent. $930; president—it would be easier and also 1769 better to include the officers below—the president being a figure head—$1200.; general manager, engineer and superintendent $3000.; secretary and treasurer who should assist in the general office work on certain occasions $1500. per annum; three assistants, to above, or clerks, averaging $600. per year $1800. The first two of those items, insurance and taxes, amount to $6,430., and the last four items I have given amount to $7,500. One general foreman of shop and street department who should be a practical meter maker and do some work $1000. per year; three assistants, or mechanics, at $2.00 per day, or $60. per month $2,160.; two assistants, or skilled laborers, at $1.50 per day, or $40. per month, $960.; maintenance of one horse and wagon at $20 per month $240. These last items amount to $4,360. One solicitor and canvasser for business $730. per year; one boy $270. a year; two telephones at $3.50 per month $84.00; advertising—assumed—$1,000.; books, bills stationery and postage $3,000. These last sundry items amount to $5,084. Assuming a leakage of 5 per cent. for 8,239,000 cubic feet lost or unaccounted for at 15 cents per thousand into the holder—I assume, of course, it would be 15 cents per thousand—$1,235.85. Total cost chargeable to distribution 14.93 cents per 1000 cubic feet. Now, these figures were made before I had the amount of rent for office and stable—please bear that in mind—I added that on afterwards because I gave the amount as 15.43 cents and these items I have given foot up 14.93 cents. The other amounts to 1½ cents.

163. What amount do you include for office and stable rent and expenses?

A. Office, stable rent and expenses—I have gotten that from the

record, I did not assume that at all—$2480.33 per year, that is, 1½ cents per thousand cubic feet of gas accounted for.

164. Do you remember for what year you obtained those
1770 items for office and stable?

A. I really could not say, I did not look at the date; it was in one of the volumes of the record here but I did — notice the date.

165. Let me refresh your recollection and ask you if those are not the figures shown by the record of Mr. Little's testimony for the year ending September 1, 1901?

A. I took the figures for Mr. Little's testimony and it must have been for that year. (Witness referring to papers) That is the time.

166. What does that make the total cost per 1000 cubic feet delivered to the consumer?

A. I will have to call your attention to the fact that we did not get the total cost of the make; I reported 12 cents and a fraction but we did not go through that whole record; I make the cost of the gas in the holder 15 cents, then with the 15.43 cents, the cost to the consumer, would make it 30.43 cents.

167. Where do you make up the difference between 12.93 cents and 15 cents in cost of manufacture—what are those figures?

A. 12.23 cents are the figures I obtained from the record; I assume then ½ of a cent for purification per 1000 cubic feet and I also add a fraction for repairs.

168. How much for repairs?

A. For repairs per thousand cubic feet 1½ cents; for purification .50 cents; then I have incidentals of which I have no account at all 1.02 cents, making a pretty respectable sum, $1680. that 1.02 of a cent amounts to.

169. Is that exclusive of all the other items you have mentioned?

Ans. Yes sir.

170. Why did you add that?

A. To make it 15 cents because there were some things
1771 not reported which I thought ought to be; there was nothing there for oil to oil the machinery or waste, and I thought probably they had a clerk there too and might have had a foreman in charge. Now that 50 cents for purification includes the purification labor but there was other labor that I didn't see anything about in the record, so I added that sum to cover all those items for coal and labor as per record 12.23 cents; for repairs I assume 1.25 cents per thousand cubic feet; for purification ½ cent or .50 of a cent, then an item of $1680. per year to bring the cost in the holder up to 15 cents, that amounts to 1.02 of a cent; then the total cost to the consumer would be as I have stated.

171. State whether the items that you have covered in the cost of manufacture, outside of those reported, are everything necessary and proper in price for the purpose of putting the gas into the holder?

A. According to my opinion they are.

172. State whether or not the several items which you have

used as entering into the cost of distribution covers everything that is reasonably necessary in the distribution department in complainant's plant in the city of Peoria in connection with the gas industry here.

A. I have omitted nothing.

173. What kind of help have you provided for at the price which you have given with respect to competency and ability to perform the services necessarily devolving upon them?

A. As good as can be had.

174. State whether or not all of those prices and rates which you have given in the distribution department, and in the manufacturing department as well, where estimated, are fair and reasonable and the usual prices paid for services of like character?

A. They are.

1772 175. Suppose the general manager is also the general manager of the electric department of the same company and that the services performed by him in that department are separate from the gas business itself and charged to the electric department, what if any difference would you make in the figures which you have given?

A. Well, I think he ought to get all I have put down; I think he would be a pretty hard worked man if he attended to both; I think if he attended to both efficiently he would have his hands full and would be worth the money.

176. You think $3,000. for the gas department enough?

A. Yes sir, I think if he did both he would not live long, not as long as he ought to; I think he ought to be paid for it.

177. Is it usual and customary in this country, where the same company owns the gas and electric franchise, for the same person to act as general manager of both?

A. It is very often so; I have done it myself several times.

178. State whether or not the item of 1¼ cents per thousand cubic feet which you have allowed is sufficient to take care of the item of repairs in the plant in question?

A. I think so.

179. Is that your judgment from your experience and knowledge of the gas business?

A. From my knowledge of the gas business, yes sir: Please remember that for some years there would not be any expense at all and that amount should be set aside for the time coming when it would be applied.

180. On an average for a long period of years, you fix it at 1¼ cents?

A. Yes sir, just ordinary running repairs.

181. State whether or not you discriminate or distinguish between ordinary repairs and depreciation?

Ans. Yes sir.

1773 182. Do you know from your experience in the gas business and from your knowledge of the subject generally the

average amount of depreciation in gas plants of the size and under the conditions of the one owned by complainant in Peoria?

Ans. Yes sir.

183. What is the fair and customary depreciation in such a plant under the conditions mentioned?

A. There is no standard rate established or customary rate but in my opinion it would be about 4 per cent.

184. State whether or not that is based on your actual experience in the gas business during the period of time concerning which you have testified?

A. Yes sir, and it is a very liberal allowance.

185. What difference do you make between repairs and depreciation?

A. If you have to have new benches sometimes, entirely take the retorts out and put in new settings, that would be depreciation. I mean by depreciation a sum set aside to keep the plant up to its best capacity. Ordinary repairs would mean patching retorts, patching pipes, sometimes putting new brasses on an engine or something like that.

186. Suppose a machine or piece of apparatus has through lapse of time or casualty become so depreciated as to have no further use and have to be replaced—to what would you charge that?

A. To depreciation, that is where it ought to go, but in running work we might charge it to repairs, dependent on how we keep the account; the four per cent. is a sinking fund, some would call it maintenance of plant, which is different from repairs. If an engine becomes entirely worn out and has to be replaced by a new one, that would be charged to maintenance of plant or taken from that sinking fund—I would not call that repairs; but if that engine merely broke a cylinder, piston or crank I would call that re-
1774 pairs.

187. Do you know the cost of complainant plant complete as shown by the record in this case?

A. According to the record, yes sir.

188. What is it?

A. $434,252.35 as taken from Mr. Little's testimony including real estate.

189. To what portion of that total do you apply the 4% depreciation?

Ans. To all excepting the real estate—$391.002.35.

190. What is the total of the cost of the real estate which you have used?

Ans. I have seen two accounts and I have taken the highest; the highest I have seen in the evidence is $43.250.00

191. Did you also see in the record a statement to the effect that the real estate cost about $51.000?

A. I did not or I would have taken that figure.

192. Assuming that the output for a year is 164.000.000 and a fraction, as you have testified, that the price received is 75c. per

thousand cubic feet, deducting from the gross receipts on that basis the entire cost, concerning which you have testified, what sum remains?

Ans. $56.244.13.

193. What percentage is that of the entire cost of complainant's plant, as shown by the record?

Ans. 12.93%, nearly 13%.

194. State whether or not you at this time recall any places in this country where gas for illuminating and fuel purposes like that furnished in Peoria is sold at 75c. per thousand or less?

A. Danville, Va. is one; that is the most notable case.

195. What is the rate there, if you know?

A. It is less than 70 cents; I think it is even less than 60 cents now; it seems almost incredible to a gas man, but it is so. When I was there I think it was 70 cents, but I have heard it stated since it was less than that. At Cleveland, O., I think it is less than 75c. I was there not so very long ago and I think that was the price then. Now, that is, of course, where there is no gas war. There are places where they have little gas wars where the price gets down very low occasionally, but the two places I have mentioned are the only two I can think of just now where gas is sold for 75c. or less.

1775

196. Do you know what the rate is at Hamilton, O.?

A. I do not; I have heard but I do not remember.

197. Do you know what it is at Wheeling, W. V.?

A. No I do not; I know it is low but don't know the figure.

198. Do you know what it is at Akron, O.?

Ans. I do not.

199. Do you know the lowest rate at which it has been sold by any organized company in New York within the last three years?

A. Yes sir, but that was a gas war and that would not count; there is one works, I forgot to mention, but that ought not to count either I think, it is in West Virginia, Parkersburg; I think the people there were operating a plant just to satisfy themselves.

200. I mean where plants are operated in the usual course of business where no unusual condition exists.

A. There are two places I know of certain, viz., Cleveland, O., and Danville, Va.; I have heard of others but I don't know about them personally.

201. Do you recall any place in Wisconsin where the rate is 75c. or lower?

Ans. No sir.

202. Do you remember what the rate is in Cincinnati, O.?

A. No sir, I do not know; I think it was 90c. at one time but I do not know what it is now.

203. Do you know what it is at Terre Haute, Ind.?

A. I do not; it has been as low as 30 or 35 cents during a gas war.

1776 204. I mean when there was nothing of that kind to disturb the rates.

A. It was more than 75 cents then but I don't know what it is now.

205. What is the cost of gas production and distribution in England as compared with the cost in this country, if you know?

Objected to as incompetent, immaterial, irrelevant, not tending to throw any light on issues in this case and because no proper foundation has been laid for it as to conditions of production or distribution.

A. The cost of material is about the same now; the cost for labor, the total cost, is about the same but instead of working 12 hours a day the men only work 8; the cost of gas is in every instance less than in this country; I made a special investigation of that for the Washington Gas Co. five years ago.

206. What are the prevailing rates or prices charged to consumers there?

Objected to same grounds as before.

A. The prevailing rates are about 65 cents per thousand.

207. Do you know of any number of instances where the rates are lower than 65 cents?

A. I know of two only that I can recall with any degree of certainty now; one at Belfast, Ireland, where it is 60 cents, and one at Salford, just south of Manchester, where the lowest rates—I have been told what they were, I can hardly believe it but I don't know why I should doubt it—are about 35 cents per thousand when it was told me; I asked a second time and they said that was all but I could not understand it.

208. Did you visit those works when there on your last visit?

A. No sir, but I saw the foreman and general managers, I visited them five years ago, and at that time the price was 48c.,
1777 something like two shillings; I have since been told it was one shilling nine pence; I know it don't seem possible they can sell gas for that price but I was told that.

209. On the continent did you investigate conditions so as to inform yourself regarding the cost of gas production there as compared with in this country?

A. I did about five years ago, yes sir.

210. How did the cost then compare with the cost in this country including the entire cost of delivery?

Objected to as incompetent, immaterial, irrelevant, too remote, having no bearing on the issues in this case.

A. I really don't remember and I don't want to guess at it.

211. If I understand your former answer you did not investigate that question on the continent on the occasion of your last visit?

A. No sir, I was not on the continent at all on my last visit; I was only in England on my last visit.

Adjourned until Tuesday, July 22, 1902, at 10 o'clock a. m.

United States circuit court room, Government build.

PEORIA, ILL., TUESDAY, *July* 22, 1902—10 a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin, Mr. E. C. Ritcher and Mr. W. T. Abbott appearing for complainant. Mr. Henry Mansfield and Mr. F. H. Tichenor, appearing for defendant.

Direct examination of FREDERICK EGNER resumed by Mr. Tichenor:

212. What would be the expense of raising the gas from the candle power shown by the record during the six months, 1778 concerning which you have testified, to 18 candle power?

A. About ½ cent per thousand cubic feet—hardly that. What is the price of oil here? I would use oil and I cannot answer without knowing that.

213. Supposing the price of oil for enriching is 3¾ cents per gallon what would it cost?

A. I should say it would be about ½ cent per thousand cubic feet or a little less than that.

214. Is that price of 3¾ cents per gallon about the normal price or above or below, if you know?

A. It is about the average price so far as I know; the price of oil changes so often, so arbitrarily one can hardly say; I have known the price of oil to change 2 cents a gallon in six months' time.

215. State at what point in candle power gas shows a tendency to smoke and what are the causes for it when it occurs?

A. Any gas made if subjected to a draft the gas will smoke; that is a cause of course, but when gas smokes it depends entirely on the method in which it is consumed. I want to illustrate that. Ascetyline gas is not only said to be but is the richest gas made; it is of 240 candle power, about that; that means that five cubic feet of it consumed at the rate of five cubic feet per hour would give illumination equal to 240 standard candles; you cannot burn ascetyline gas in a burner and consume five cubic feet; it is too rich, it would smoke, consequently a burner suitable for that gas is used, using a very small thin slit burner, consuming ½ a cubic foot per hour, seldom running to a cubic foot per hour, which gives a brilliant light; if you make that slit larger to use more of the gas, it will smoke, whereas with a proper burner it will not smoke. So it is with natural gas. Natural gas has been used for illuminating purposes in burners which we call a bull's head burner, with big slits;

if you burn natural gas in that it illuminates without
1779 smoking but if you put in some other burner it gives but little illumination; that is the way it is with all gases; very rich gas requires a tip with a narrow slit or small hole; if you have a poor gas, say 15 candle power gas, the slit would be larger and then the gas would give light; if you were to take a tip with a very narrow slit and use it with 15 candle power gas the gas probably would show about 8 candle power, it would strike one to be that way but get a burner suitable for that gas and it will show its full power; that is a well recognized fact among well informed gas men; of course if you are in a community where you are to furnish 18 candle power gas and you know you have to furnish it I would then try—I suppose most any experienced gas man would that is looking after the interests of his company—to get a burner that will give the best results with that 18 candle power gas; then that gas will not smoke but will give as near its full power as could be expected. I think I have covered your question. It is altogether a difference of burner. The burner used for testing light generally, the one most usually accepted, is called the London referee standard Organd burner. In New York city they use a slit burner because the Organd is obselete; it is not suitable for New York gas at all. In England the gas is about 14 to 16 candle power and that will burn all right with an Organd burner but if you put in 26 or 27 candle power gas it would smoke in that burner. I think I have made myself clear.

(The MASTER:)

216. It would smoke because the openings in the burner were too large.

A. Yes sir, the quantity of gas issuing from that burner could not get sufficient oxygen to it to give the carbon the illuminating property; the carbon is brought to a white heat and that is what gives the light; it would not get oxygen enough to cause the
1780 carbon to emit a light. Don't understand me to say the Organd burner would not be suitable; it has a ring burner with a lot of holes in it; it is named after the inventor of it; you might have that burner made with small minute holes in it and then it would work all right, but the London refferee burner with holes in it of the ordinary size would not give a proper light; it would illuminate all right with 14 to 16 candle power gas but for 16 to 18 candle power gas it would not be fit.

(Mr. TICHENOR:)

217. Is it practicable to burn without smoking coal gas of 20, 22 or 24 candle power?

A. Yes sir, you can burn it without smoking with a suitable burner but it is hard to get coal gas to that power?

218. If it were brought to that power it would burn with a suitable burner, would it?

Ans. Yes sir.

219. Do you know the rate which gas securities in this country bear?

Objected to as incompetent, irrelevant, immaterial and not pertinent to the issues.

The MASTER. I do not see the materialty of it.

Mr. TICHENOR: We think it material.

The MASTER: He may answer subject to the objection.

A. Well, I know it only from reading in the different technical papers on the subject.

220. What are the rates?

Objected to as hearsay, not the best evidence.

The MASTER: I think it subject to that objection, as the witness has shown by his answer that he knows nothing about it of his own knowledge.

221. Do you know what those rates are as shown by Brown's Directory?

Ans. Yes sir.

222. What are they?

A. So far as it shows it at all—it don't show it in every
1781 case—they average about five per cent. for the bonds; it don't state about the stock at all; there are very few quotations in Brown's Directory.

223. What, in your judgment, is a fair return to the investor in gas properties?

A. I should say that would depend largely on what is considered a fair investment in any business in the location where you are; I should say six or seven per cent. would be a very good investment; if you get 6 or 7 per cent. you get more than you do from real estate, that I know something about.

224. Do you know the prevailing rate realized on real estate securities in the State of Illinois at the present time?

Objected to unless the witness qualifies as a real estate expert.

A. No, I do not, not in the State of Illinois.

225. Supposing the rate is 4½ per cent. what then would you say is a fair return on an investment in gas property?

A. I should say 6 per cent. would be very good; I would sell my real estate and buy gas property. I would like to qualify that a little to this extent. There is always the danger of city councils passing franchises ignorantly, that is a great risk—opposition franchises I mean.

226. You mean allowing a competing company, opposition company to come in?

Ans. Yes sir, that is exactly what I mean.

227. Is there any method by which that can be prevented?

A. Yes sir, there is in my opinion and I have studied it years and years.

228. What is it?

A. Sell a good article of gas at as low a rate as will warrant a fair return on the investment, then opposition companies would not go in the business; they would be put out of the business right
1782 there; and would make an investment perfectly safe if gas companies were satisfied with a fair return on the investment; I am not the only one that thinks so either; lots of eminent men that are living and some dead have spoken that way; the ablest men in the gas business make the same statement and if it was done you would eliminate opposition companies and if you eliminate opposition companies gas properties, I believe, would be more safe than Government bonds, I would rather have it because there may be revolutions or there may be wars; I have seen the time when I had to pay $2.40 in greenbacks for a gold dollar but gas securities always would be worth something.

229. Did you testify yesterday as to whether or not it is practicable in Peoria to furnish gas of a nearly uniform 18 candle power?

A. I think I did answer that question.

230. It is, is it?

Ans. Yes sir.

231. Suppose that the loss of gas between the station meter and consumers' meters is greater than this figure you have given, to what would that be attributed?

A. To a number of causes; the station meter might be wrong or the gas may have been tested at a higher temperature than we usually calculate on; there might have been rivalry between the day and night shifts sometimes unknown to the superintendent, and sometimes known to him; maybe they run the water meter up and down increasing and decreasing the capacity of the meter; I have known that to be done many times. The consumer's meter may be out; I have seen a consumer's meter that had been left for years that did not register at all; the superintendent did not look after them and the men did not report them; then there may be breaks in the pipe and leakage—naturally would be; all that has to be looked after; if the leakage becomes more than normal the
1783 superintendent should at once look after it; the first thing to do would be to look at the station meter, keep an eye on that, test the consumers' meters and see if they are all right; consumers' meters ought to be tested regularly because they are apt to get out; it is not much of a job, don't cost a great deal.

232. So far as loss in the mains is concerned is it liable to be greater or less as the age of the plant increases?

A. As the age of the plant increases it is liable to get greater.

233. To what is that due?

A. It may be due to a number of things. For instance, the pipes may originally not have been laid deep enough and they are affected by the heat and cold causing contraction and expansion; the joints

pull out; heavy wagons may pass over them and cracks come in mains which may not be noticed for some time; the gas may pass off and go in a sewer somewhere; there may be other work done in the streets, such as is now being done here in the street, laying a steam heating plant, a deep excavation made and the earth may gave way a little bit and a gas main get out of alignment, joints pull out and service pipe pull out; electrolytic action of course will take place after while which at first is not felt but all at once it will be noticed especially near the power station.

Cross interrogatories by Mr. RITCHER:

1. What was your occupation in the year 1894?

A. As nearly as I can remember now I went to Norfolk, Va., as superintendent, engineer of the City Gas Light Co.—the Thompson-Houston Electric Co.; it is one company.

2. How long did you stay there?

A. I think I was there about 3 years and 3 months; I left there in March 1897.

1784 3. What did you do then?

Ans. I went to Europe.

4. On a pleasure trip?

A. No sir, I went there for James Green, president of the Laclede Fire Brick Co. of St. Louis, Mo.

5. As an employé of Mr. Green?

A. Yes sir, to investigate and get plans of the inclined retort system.

6. How long were you in Europe?

A. At that time about six or seven weeks.

7. Then what did you do?

A. I traveled around the country for Mr. Green, more or less trying to get people to buy his goods, fire clay goods, retorts, etc.

8. With special reference to the inclined retort?

A. Not particularly to that, but generally.

9. Your investigations then were not favorable to them?

A. Yes, they were very favorable.

10. How long were you traveling around for Mr. Green?

A. About a year and three months altogether including the European trip.

11. When was the end of that period?

Ans. In August, 1898.

12. How many inclined retort systems did you put in during that period?

A. I did not put in any.

13. What did you do after August, 1898?

A. My home was broken up; my mother died and my wife died and I did not do anything for about a year and three months; I would just as leave have died myself.

14. After that period of a year and three months what did you do?

A. I was re-employed by Mr. Green and put in charge of
1785 several gas works he owned.

15. Were all those employments by Mr. Green personal employments or employments by the Laclede Fire Brick Co.?

A. They were employments by the Laclede Fire Brick Co. of which Mr. Green was practically proprietor.

16. How long did you take charge of these plants you speak of?

Ans. About a year.

17. Where were they?

A. My quarters were at Moberly, Mo., the gas and electric plant there, and another one I looked after was at Greencastle, Ind., a small plant.

18. Was the Greencastle plant a prosperous plant?

A. I don't think it was.

19. What price did you fix on gas in those places?

A. I did not fix the price; the price was fixed.

20. Did you endeavor to persuade Mr. Green to change those prices?

Ans. I did.

21. What price was he selling at?

Objected to as immaterial and incompetent.

The MASTER: I don't think it material.

Mr. RITCHER: I don't think it is either.

22. What did you do after that?

A. Since then I have been doing what I am doing now, acting as a consulting engineer for gas companies.

23. When did you leave the employ of the Laclede Fire Brick Co., if at all?

A. In June, or about the first day of July, a year ago.

24. Did you also leave the employ of Mr. Green at that time?

A. No, I did not leave the employ of Mr. Green at all; I was discharged; they had no longer any use for an eastern representative as they thought and they let me out.

1786 25. Were you then the eastern representative of the firm?

A. No, but that is what somebody in the office called me; I was general traveling representative and it created a good deal of jealousy there.

26. Do you know in what capacity the Laclede Fire Brick Co. employed you?

A. They employed me as a traveling agent and as a gas engineer also.

27. Where are your headquarters now?

Ans. Morristown, N. J.

28. When did you first take up the management of the Norfolk plant?

Ans. In October 1877.

29. How many years at different times were you in charge there?
A. The first time about 5 years and 7 months, from October 1877 to May 1883, having general supervision of the plant.
30. At what price did you sell gas there?

Objected to as immaterial.
The MASTER: I don't think it material.
Mr. RITCHER: He has testified as to what price gas should be sold at and this is a plant where he was in control and I would like to know whether he put his ideas into operation.
The MASTER: I don't think it material whether he did or not but he may answer subject to the objection if you desire.
Mr. RITCHER: I will not press the inquiry.

31. What was the per cent. of coke produced under your management of the Norfolk plant?

Objected to as immaterial.
The MASTER: I don't think it material.
Mr. RITCHER: He testified on direct examination as to that.
The MASTER: I think not; he testified with reference to the percentage of coke produced as shown by the statement marked Exhibit 20.

1787 32. From your experience as a gas expert what per centage of coke is produced in the manufacture of coal gas?

Objected to as immaterial.
The MASTER: I think it material. He may answer.

A. What kind of coal?
33. Name your own coal.
A. Well, we will name Youghiogheny gas coal because that is named in this case.
34. What percentage of coke is usually produced from that coal?
A. It differs a little bit as to the quality, say from 66 to 68 per cent. of the weight of the coal.
35. What per centage of the coke produced is used as fuel ordinarily in well managed plants?
A. That depends on your furnaces. For instance, in an old style furnace you might use 40 and even 50 per cent.—the old style fire bar furnace. In the generative furnace, or regenerative furnace either, you use say from 17 to 25 per cent.
36. How would the per centage of fuel so used differ in benches of 5's and benches of 6's?
A. The difference between benches of 5's and 6's is not very great; I could not say exactly how much now but it is not very much.
37. How is it between benches of 6's and 8's?
Ans. You must——
38. (Interrupting.) Will you answer my question. How will it differ between benches of 5's and benches of 8's?

A. Tell me what furnace you mean and I will answer your question.

39. Regenerative furnace.

A. I have never seen regenerative furnaces with benches of 5's.

1788 40. How would the amount of fuel consumed differ between a bench of 5's, which you have seen, and a regenerative bench of 8's?

A. A bench of 5's I had charge of for many years—Interrupted

41. I am asking now in regard to your general experience, not as to any particular bench, for the master rules that is improper.

A. It is my experience about 35 to 37 per cent., that is, in old style free burning furnaces benches of 5's. Now, in regenerative benches I have never had 8's but I have had 7's and I have had 6's—generative furnaces with 6's that burn about 30 per cent. and in the regenerative furnaces that burn about 18 per cent.; the regenerative furnaces were 7's and the generative were 6's, and the free fire benches with an ordinary old style furnace burn about 35 to 37 per cent.

42. Is the result of 18 per cent. you speak of the usual result in such furnaces?

A. I could not say that because a great many men differ in practice; it depends on who runs the bench.

43. Do you know anything about the amount of fuel consumed in regenerative benches besides those you have run?

A. Yes sir, I have read plenty of statements as to that and I have heard many men claim it took from 17 per cent. up to 18, 19, 20, 21 and up to 25 per cent.

44. As a gas engineer have you never had occasion to investigate and ascertain what is the general result of such benches?

A. I have investigated quite a few benches but not generally.

45. What is the per centage of fuel used in the case of the regenerative benches of 9's?

A. The difference in fuel used is not very great from benches of 6's, the per cent. differs from 17 to 25 per cent.—the whole range runs about that of the coke made in 6's, 8's or 9's; there are

1789 not very many 9's in this country.

46. If there is no difference practically between the consumption in a bench of 6's and a bench of 9's do you still maintain that a bench of 6's is more economical than a bench of 9's?

A. A bench of 6's is preferable to a bench of 9's; I did not say it was more economical under certain conditions.

47. What is the general per centage of leakage in the operation of a gas plant as experience has demonstrated and as recognized by the gas fraternity?

A. It is generally considered about 5 per cent. on the average of leakage.

48. Don't you know as a matter of fact it is considered to be about 10 or 11 per cent. by all gas authorities?

Ans. No sir.

49. And so stated in the United States Census Report of 1900?

A. I don't know for I have not seen that report; it is not so just the same.

50. What is the percentage of ammonia produced in the general operation of a gas plant on proper lines?

A. That differs according to the coal used.

51. What is the amount produced to the ton of coal carbonized of the Youghiogheny second pool coal?

A. I have obtained as much as 5 pounds.

52. I am not asking you what you obtained. I ask you as a gas expert what has been obtained as the general experience of gas men. You might have gone into a chemical laboratory and obtained most anything.

A. Yes, but I am trying to tell you what I obtained in my experience.

53. What is the amount usually obtained by plants the world over?

A. Authorities give it that 28 pounds of sulphur is equal
1796 to 7 or 8 pounds of ammonia but my own experience is less than that.

54. You have never taken occasion to find out, have you?

A. Certainly, I have taken a great deal of pains to find out, but you will not let me state my own experience or I could tell you; of my own knowledge it is 5 to 6 pounds.

55. I tried to ask you about a particular plant and the master said it was improper to ask you about a particular plant and you ought to know that as well as I. In your direct examination I think you stated that some plants required as little as ½ of the coke produced for fuel purposes—can you name any such plant?

A. I don't remember to have said that.

56. If you did say it, do you now wish to correct your testimony?

A. If I said that but I don't remember saying it.

57. What is the average life of a retort as demonstrated by practical experience in plants generally?

A. The average life at the present time is about two years' constant work; you understand that the retorts are sometimes run six months in a year, then let down, maybe run three or four months, and let down and the retorts may be longer in the works of co urse.

58. If the retorts are let down as you testify, is it not a matter of experience and a fact that their life is shorter than if kept heated continuously?

Ans. Undoubtedly so.

59. You stated you received a letter of invitation to come here as a witness—have you that letter with you?

Ans. I have not.

60. Have you it somewhere?

A. I have it I think in my room at Morristown, N. J.

61. Will you produce it?

Objected to because the witness is not compelled to produce th letter; it don't make any difference under what circumstances came here.

1791 Mr. RITCHER: I have a right to show the animus of th witness.

The WITNESS: I have no animus at all I assure you.

62. Will you produce this letter?

A. I have not got it with me.

63. Will you send that letter to the master by due course of mai

Objected to same grounds as before.

A. I think I must be governed by Mr. Tichenor.

64. You refuse then, on the advice of counsel, to produce it?

A. Yes sir. So far as I am personally concerned you could hav it.

65. In your testimony on direct examination you repeatedly r ferred to what the record contained. Have you read the enti record in this case?

A. I have read a number of volumes of it, some 7 or 800 pag I think altogether.

66. Was that all you read of it?

A. Yes sir, I did not read any further; I had it but I did no want to read it as it seemed to be a repetition of the same thing.

67. Then you have not read the entire record in this case?

A. No sir, I have not.

68. Who indicated what portions of the record you should read

A. Nobody indicated that; they gave me three volumes—I ha the exhibits by the way, I have seen them—Exhibit 20, I had thos exhibits and they brought six volumes for me to look at in M Tichenor's office and I took three of them and read them at the hote and part of the time at Mr. Tichenor's office.

69. Did you take the three first or three last volumes?

A. I think the three first.

70. How did you happen to take the three first instead o

1792 the three last?

A. I took volumes 1, 2 and 3, and had intended to tak them all but when I returned those I said I would not take th others for I thought it was waste time.

71. Then you come here as an expert to testify, having read bu half the record and without any advice as to whether what you hav read covers the case or not. Is that the fact?

A. I have read what I have stated.

72. My question is, without advice as to whether the half of th record you have read was in any sense complete, you come here as an expert to testify and refer to what the record contains.

A. I do so without advice; I was told there was the evidence and I had better look at it to see what was required and I did so.

73. This Exhibit 20 that you have spoken of, was that given to you by the master in this case?

A. No, I think it was a copy I had.

74. Did you verify it with the copy on record here?

A. I did not.

75. When you speak of the labor shown by Exhibit 20, entering into your computation as to the cost of gas in the holder do you refer to the labor shown by Exhibit 20?

A. Yes sir, and some of it I have added; I did not see it mentioned in the exhibit and I knew it was necessary and should be there and I added it—I assumed that.

76. Did you cover those additions in your testimony yesterday by specific items?

Ans. I think I did.

77. In your testimony yesterday you added ½ a cent for purification, 1¼ cents for repairs and 1 2/100 of a cent to bring it up to 15 cents. Were those the additions you refer to?

A. Yes sir.

78. If any labor entered into the cost of gas in the holder
1793 other than the items which I have just named and other than the items appearing in Exhibit 20 you did not take that labor into account, did you?

A. I did to a certain extent and I will tell you how. I saw that coal was said to cost $2.60 per ton, that coal was charged at $2.80 and I assumed that included the labor of unloading it and bringing it into the works.

79. If it did not include that, your computation would be an error to that extent?

Ans. Yes sir, to that extent.

80. Did you make any other like assumptions in your estimate?

A. None but what you have named.

81. What proportion of fuel do benches of 6's consume as compared with benches of 9's in comparison with the amount of gas made?

A. Of course a bench of 6's would consume less than a bench of 9's; a bench of 9's would make more gas than a bench of 6's and make more coke; therefore, if I say 12 pounds of coke is used to the hundred pounds of coal carbonized, which is the way we usually figure and I figured it that way, it makes no difference whether it is 6's, 8's or 9's. I say 12 lbs. of coke per a hundred pounds of coal carbonized and do not specify the kind of bench at all; a bench of 9's uses more coal and more retorts and makes more gas.

82. Are you willing to go on record as stating that a bench of 6's can produce gas as economically as a bench of 9's, bench for bench?

A. Under certain conditions, yes sir—under certain conditions more so.

83. Can it do it in the production of 500,000 cubic feet per day?

A. In that case, a bench of 6's would be far preferable to a bench of 9's. I would not recommend benches of 9's in small gas
1794 works like that.

84. Would you stake your reputation as a gas expert on that statement?

Ans. Yes sir.

85. Calling your attention again to benches of 6's and 9's, which requires the more expenditure for labor per thousand feet of gas made?

A. In proportion to the gas made it would require about the same amount of labor per thousand feet.

86. You say about—be more specific, state whether you mean $1.00 or $100.00, I don't understand exactly what you mean by about—make a definite statement.

A. Say we have a bench of 6's; I consider one man is sufficient to take care of that bench of 6's, or I could illustrate it better this way. We have three benches of 6's, 18 retorts, I put three men to those 18 retorts; say I have two benches of 9's, 18 retorts, I put three men to them, two men could not handle it, it would be too much work for two men, it is according to the number of retorts to take care of.

87. Didn't you testify on direct examination that two men were sufficient to take care of two benches of 9's?

A. I don't remember, I might have done so; two men might do it.

88. You were testifying for the defendant yesterday and for the complainant today, does that make any difference?

A. No, two men might take care of two benches of 9's—strong powerful men; I have known men do that.

89. Are those the kind of men you put in yesterday as cheap labor?

A. No sir, they would have to be first class powerful men.

90. If you have but two men to benches of 9's why would not the labor be cheaper than with benches of 6's that required 3 men?

1795 A. It depends on what you pay your men and what kind of men they are.

91. Suppose you pay them the same.

A. If you paid them the same that would alter the case but you probably would not do that.

92. Suppose those men were the kind you had in mind when you fixed the wages yesterday and number of men to a bench.

A. I had in mind the best kind of men then.

93. Are not you talking about the same kind of men now that you were talking about to Mr. Tichenor yesterday?

A. You cannot twist me up like that.

94. Answer the question. Are you not talking about the same kind of men now?

A. Of course I am—Interrupted.

95. Then if you can get along with two men on benches of 9's can not you get along better than you can with three men on benches of 6's?

A. My recollection is, there was no number of men mentioned at all per bench in my estimate yesterday.

96. You gave the cost of distribution yesterday—I have it here.
Ans. Yes, I have it too; I say, so many men.
97. Then you went into the retort house matter?
A. Yes sir, I did, and I have the number of men here somewhere.
98. You stated yesterday that a retort could be ruined in one night, what did you mean by that?
A. By carelessness a retort might be ruined in one night; you might have a furnace in good working heat, almost white heat, and a man might go to sleep or get drunk and let the fuel burn down, as I have seen done, then the cold air rushes through there and the retort likely cracks and may fall to pieces.
1796 99. A man may be taken suddenly ill and that might happen.
A. Yes, if there is only one man in the works.
100. How do you avoid the occurrence of such things?
A. You know you usually try to employ men who are reliable and you seldom in a works, having 6 or 9 retorts, put but one man there; there is usually more than one man, so if one man is sick or gets drunk the other men notify the superintendent or get somebody else.
101. That involves having a superintendent or foreman there does it not?
A. One of the men may have that power; I have known that to be the case in a small place like Peoria—probably the head stoker will do that.
102. You have to have a foreman or some one to exercise his duties?
Ans. Yes sir.
103. Is that true day and night?
A. Yes, just the same.
104. That element would enter into manning the force of a plant, would it not?
Ans. Yes sir.
105. In that respect you would consider the gas business as safe as any other business on earth?
A. I have always found it so and I have had charge of many men for years and years.
106. You spoke yesterday of the difference in economy between benches of 6's and 9's in the matter of the amount of gas which had to be made varying. As to whether that actually would produce an economy in a bench of 6's as compared with a bench of 9's would depend, would it not, on the actual data as demonstrated by operation?
Ans. Yes, certainly.
107. How many retort houses in the United States were equipped with inclined retorts during the months of March, April and May, 1899
1797 Objected to as immaterial and incompetent.

A. To the best of my recollection there was only one in Louisville, Ky., and I am not very sure about the date—oh, yes, there were two, one at Louisville, Ky., and one at Bay Ridge, Kings County, Gas Illuminating Co., Brooklyn; I am not absolutely sure about the time, but I think it was about that time.

108. How many benches were there of that kind in the Bay Ridge plant?

A. 5 benches of inclined retorts.

109. Were they in existence in March, April and May, 1899?

A. To the best of my knowledge they were but I am not absolutely certain.

110. As a matter of fact, the Louisville plant was not even ordered in 1899, was it?

A. No, it was not built but they were building, it was in course of erection at that time.

111. How many other plants in the United States are now equipped with the inclined retorts?

A. None but quite a number are building, though.

112. You mentioned some inclined retorts in the Laclede Gas Company's works?

Ans. Yes sir.

113. When was that built?

Ans. In 1890.

114. Has the Laclede Company put in any retorts or benches of that kind since that?

A. No, they have done all they could to keep them out of the country.

115. Keep what out of the country?

Ans. Inclined retorts.

116. I asked you if that company had put in any benches of retorts of any kind since then?

A. Yes sir, they have put in benches.

117. Of inclined retorts?

1798 A. No, sir, old fashioned benches of 3's that nobody has today.

118. Do you recollect what the capacity of those 7 benches of the Laclede Company are?

A. I think it was a million cubic feet a day—the new retort house.

119. About how many gas plants are there in England?

A. I do not know how many altogether.

120. You said there was 67 equipped with inclined retorts?

A. Yes sir.

121. Don't you know there are over 900 equipped with the other kind?

Ans. No sir, I do not.

122. Do you know in a general way how many plants there are in Great Britain and the United Kingdom and on the continent?

A. No, I do not.

123. When you were investigating the value of these inclined retorts, didn't you ascertain what percentage of gas plants had them in England?

Ans. No sir, I did not.

124. You are familiar with the general plan of the works of the complainant company here?

Ans. Yes sir.

125. Have you examined the blue print showing the works?

A. I have seen it.

126. You have read Mr. Little's testimony with regard to the manner in which the works were laid out?

Ans. Yes.

127. Assuming that the plant of the complainant company is as described in Mr. Little's testimony, how would you get the coal from the cars to the benches?

A. I could not say that.

Mr. TICHENOR: I object to that as immaterial, for the reason the record shows the cost of the coal delivered and those were the figures actually used by the witness.

1799 Mr. RITCHER: The record shows what the cost was delivered on the cars; this witness has been testifying as to the labor required to produce gas down there, and I want to get at the labor from the car to the benches.

Mr. TICHENOR: I supposed that $2.80 per ton was the cost delivered in the works.

The MASTER: No, that is f. o. b. Peoria, that was the testimony of Mr. Little, as I understood it.

128. How would you get the coal out of the cars?

A. I don't know anything about the place; I have not seen it or any plan of it.

129. How would you generally get coal out of a car in the conduct of a gas plant?

A. In a number of ways; I have seen coal taken out by hand and teamed out and have seen other cars which were elevated and dumped into the coal shed.

130. Are either of those methods in vogue in towns of this size?

Ans. Yes sir.

131. Where?

Ans. At Morristown, they empty the coal cars from the bottom into the coal shed.

132. What is the output of the Morristown works?

A. About 32,000,000 a year.

133. What is the altitude of the track on which the coal is delivered?

Ans. About 15 feet above the floor of the coal shed.

134. Would you advise the dumping of cars where the railroad tracks are on the level of the ground?

Ans. No, I would not.

135. Where the railroad tracks are on the level of the ground, how would you get the coal from the cars?

A. I might find it good policy to elevate the track, if I had room to do it, but I suppose you could not do that, and it would have to be shoveled out.

1800 136. What would be the cost of the labor per ton for shoveling that coal out?

Ans. About 6 cents a ton, I should say.

137. Could you fill the coal shed at 6 cents per ton?

A. No.

138. What would it cost, assuming you filled your coal shed?

A. Probably the shoveling of it, if you had to trim it up high, etc., it would cost ten cents a ton—within that, I think.

139. How would you get that coal from the coal shed to the benches?

A. Lower it in wagons or if the works are small, wheel it there.

140. What would be the cost of the labor for doing that?

Objected to because the record shows that the stokers do that work themselves principally.

Mr. RITCHER: There is no such testimony in the record; you might infer it from your witness' testimony but I want to show it is not a fact.

A. Shall I answer that question?

141. That is what I asked it for.

A. Well, I was stopped by an objection, you know. In works of that size, the stokers usually do it, or men employed in the retort house usually do it and it is included in the wages.

142. Do they do that in a bench of 9's?

A. It don't make any difference about the size of the bench.

143. You stated this morning that one man could run a bench of 9's?

A. I said you might get a man that would do it but I would not have the heart myself to put one man to a bench.

144. Unless they were giants, some particular breed of men?

A. A strong, stout stoker could do it; the best man I ever had was a little man that did not weigh as much as I do by
1801 many pounds.

145. In running a bench of 9's how many pounds of coal are placed in each retort in charge?

A. That lies entirely with the management; there is no rule for that?

146. What are the limitations of that rule?

A. The limitations are really what the retort will hold and the heat put on it, if you want to push it to its limit, but that is not the rule; there is no rule for that at all.

147. As a gas engineer, have you not any idea as to how much coal should be put into a retort properly charged?

A. I know what I would do, I would charge a bench such as are described in your papers I have seen—I think one could easily put 350 pounds of coal into a retort; that would be about as much as I would want to put in every 4 hours.

148. That would make 18,900 pounds per day per bench, would it not?

Ans. Yes sir.

149. Would you expect your stokers to bring that coal from the shed into the retort house, draw the retorts, draw the coke and quench it?

A. No, sir, certainly not, I would not have the heart to do it.

150. Neither would the man, I think, have the heart to do it after he had done it once?

A. He would not keep it up long, but in benches of 6's one man could do it.

151. Didn't you just state that it made no difference whether it was a bench of 6's or 9's that one man could do it?

A. Not quite that way; I said when I spoke of putting in a man to a bench of 9's that you might do it, you might get a man to stand it, but as a rule you could not.

1802 152. Then you wish to modify your testimony in that respect?

A. If that modifies it, I do; I am not sure that I expressed myself right before.

153. In figuring the cost of gas in the holder yesterday, what did you figure the labor of unloading the cars and getting the coal from the shed to the benches at—how did you figure that in?

A. I took the number of men reported on the report—three thousand and some hundred men, that is adding up the number of days they worked for six months, as shown in "Exhibit 20."

154. Then if there were other men employed in that work that does not appear on that exhibit, it did not enter into your computation?

Ans. No sir, except for purification and repairs; I made allowance for that.

155. In your computation yesterday, what allowance did you make for boiler house labor?

A. In a little place like this, the retort house men usually take care of the boiler in my experience.

156. Do you refer to some of these giants or what breed of men do you refer to?

A. No sir, I run the works at Norfolk, Va., and the men there took care of the boiler all right.

157. What was the output at Norfolk?

A. When I was there first we sold 72,000,000 a year; we made a little more when I was there last.

158. You testified yesterday on the basis of 164,000,000 didn't you?

Ans. Yes sir.

159. Would you call that no difference from the Norfolk works?

A. I do not quite catch on to the meaning of that question.

160. You were speaking just now of the result in Norfolk, were you testifying from your personal experience?

Ans. Yes sir.

1803 161. Has that been what you have based your testiimony on in this case?

A. On my personal experience in one sense and my figures so far as I could get them from these exhibits.

162. Then in your testimony in chief on yesterday, you were testifying as to what you knew from personal experience, if I understand you?

Ans. Yes sir.

163. What would be the purifying labor, or work in a purrifying house in the production of 164,000,000 per year?

A. That would depend very largely on the manner of conducting that operation; I will explain what I mean if you desire.

164. Well, you need not go into that. What would be thee limit of the labor necessary there?

A. I have made gas for 5 months without ever having a penny's worth of labor in it; then again, you might spend several diollars; it is hard to define; I will have to explain it if you want to understand it.

165. You speak of coal gas, I suppose?

A. Coal and water gas, either or both. I am willing to explain it if you want it.

166. Does it cost more or less to purify coal gas or water gas?

Objected to as immaterial.

A. Ordinarily, the way it is managed now, it does not cost any more; the old way, the water gas cost the most but the way operations are conducted now there is scarcely any difference.

167. What labor do you figure on in connection with the ammonia concentrating plant and apparatus in the manufacture?

A. I could not specify that, but it is very little; it is mostlly done with steam pumps and steam pipes, and there is not much labor attached to it.

1804 168. When you arrived at the cost of gas in your examination in chief, you did it without being able to account for the labor in connection with the ammonia?

A. No, I can quote a case to you where there is no extra expense at all.

169. Did you base your figures on that assumption?

A. Don't you ask me questions like that—stop right there.

170. I asked you the question—Interrupted.

A. And I will answer your question, but I want you to ask me in a different manner.

171. Did you base your figures on that assumption?

A. I based my figures on the assumption there was no extra labor.

172. If there was extra labor, then to that extent your figures are incorrect?

A. My figures are correct because it can be done without extra expense; I know where it is done without extra expense.

173. Will an ammonia concentrating plant run itself?

A. No sir, but a man from the retort house can go and turn this steam off.

174. One of these giants would do that too, I suppose?

A. Yes, or a good little man could do it.

175. Who puts the coke into the yard and who loads it in the car or wagon in the estimate which you made in your examination in chief?

A. I made no allowance for that, for there is nothing shown in the record that I could see; I supposed the number of men given there as working were the men that did all the work; it states there for so many men, and I supposed that was all the men.

176. As a matter of fact, if that is done by other labor, then to that extent your figures are incorrect?

A. Yes, if it is done by other labor.

1805 177. Do you expect that the stokers will take the coal from the shed, bring it into the retort house, charge the benches, draw the coke, quench the coke and load the coke into wheel barrows, or other conveyance, and put it into the yard, load it on the cars, attend to the ammonia concentrator, attend to the purifying apparatus and attend to the boiler—do you consider all that the work of the stokers?

A. No, not at all, and I didn't say so either.

178. If in your estimate on direct examination you have assumed, inadvertently or otherwise, that all of that was done by the stokers, have you made an assumption which is not within the range of probability, at least, in the operation of a gas plant?

A. If I did so, yes sir, but I did not; as I have said, I supposed the number of men given there as working represented all the labor. If they are not all there, that is not my fault.

179. What is the nature of the apparatus, which you mentioned in your examination in chief, under which the inclined retort system can be charged by a child of six years?

A. Oh, I saw that in Edinburg, but that would not apply to your works here; you could put it in of course; I saw it in operation.

180. Do you know what the expense of that apparatus would be?

A. I have been told but I don't remember the figures, it is not much.

181. Do you know of any such apparatus which is being operated by a 6 year old child?

A. No, certainly not.

182. Did I understand you to say on direct examination that the cost of labor in the retort house in Louisville is from 40 to 65 per cent. less than the cost of labor in the retort house in Peoria by

reason of the fact that the retorts in Louisville are in-
1806 clined?

A. I did not specify Louisville; I said that an inclined retort system reduced the cost of labor, that it was claimed to reduce it, from 40 to 65 per cent.; I did not refer to any plant but generally; Mr. Barrett's figures are something like that, I did not say it of my own knowledge.

183. You have stated, I think, that the net cost of gas in the holder in Peoria was 12.23 cents per thousand before you added one or two fractions for purification?

Ans. Yes sir.

184. If the inclined retort system were introduced here, to what extent would that figure of 12.23 cents be reduced?

A. According to my recollection of my figures, the labor came to 9 cents and something, taking the men as reported as I stated a*hwile* ago. Now, with the inclined retort system, it could be reduced to about 3 cents per thousand feet, I believe.

185. In other words, you could put gas into the holder for about 6 cents?

A. No, you could save in the labor 5 or 6 cents per thousand cubic feet.

187. That would reduce the 12.23 to 6 or 7 cents, that is, based on these figures you say you have seen but you don't know anything about it yourself?

A. I beg pardon—I don't know anything about what?

188. The correctness thereof—you spoke about Mr. Barrett saying so and so?

A. Yes, but that is pretty strong to say I don't know anything about it; for I do know something about it; I don't know anything about what Mr. Barrett says, but I have written papers and read them before the gas associations and they are on record showing that I do know something about it, and I would not like to go on
1807 record here, even in a case like that, that I know nothing about it or I said so, for I do.

189. We will not change the record in any event?

A. All right.

190. Will you kindly name such cities as you can of 50,000 inhabitants and upwards, that are now using gas holders more than 25 years old?

A. Let me see. There is one at Norfolk, Va., that is over that many years old.

191. How many inhabitants there?

A. 60,000 they claim, there may be 40,000 or 50,000.

192. How old is that holder?

A. I could not say really how many years old; it was renewed once a good many years ago, but I could not give the exact date.

193. Do you know it has been up 25 years?

A. Yes, it was there when I first went there in 1877, and was in use then, and that is more than 25 years ago.

194. When were you there last?

Ans. 3 or 4 weeks ago.

195. Was the same holder there then?

A. It appeared to be the same, I could not really say.

196. Name some other city where the holders appears to be the same as it was 25 years ago?

A. The Metropolitan Gas Light Company of New York—Metropolitan branch of the Consolidated Gas Light Company.

197. When was that erected?

Ans. In sixty something.

198. Is the same holder there?

A. The same frame is there, whether it has been renewed or not I could not tell.

199. Tell me a few places you do know where a holder has been in use for 25 years?

A. Unless a man was there constantly he could not
1808 say. To the best of my knowledge and belief these same holders are still there; there is another one in the New York branch of the Consolidated Branch Company—a million foot holder; that was there in 1873, the same frame work, and for all I know the same holder was there.

200. You don't know whether the same holder is there or not, do you?

Ans. To the best of my belief, it is.

201. Were these holders in masonry tanks or steel tanks?

A. In masonry tanks.

202. Still in masonry tanks?

Ans. Yes.

203. Will you kindly name some more if you can?

A. I cannot think of any others now.

204. Do you know how many gas plants are in the United States?

A. Somewhere about 900, something like that, 800 or 900.

205. Do you know of any plant in cities of 50,000 inhabitants and upwards where the same engine and exhauster is being used to-day that was put in 25 years or more ago, if so, state?

A. Unless a change has been made very recently, there is an engine at the old Laclede works that was running about a year ago which was put there when the works were built at the foot of Howard street in the early '70's. I don't know just what date the Morristown works were built but the first engine put there is still running today; it was put into the old works, I think, all of 25 years ago, but I am not sure; there is also a number of other engines, I cannot recall them to mind just now, at works I have been in which appear to be the same, and I believe they are the same.

206. Are the holders, engine and exhauster in the Milwaukee plant the same as they were 25 years ago?

A. I don't know anything about the Milwaukee plant.

207. How about Indianapolis?

Ans. I have never been to Indianapolis.

1809 208. Or Cincinnati?

Ans. I could not say.

209. How is it in Cleveland?

A. I could not say about that either; I have been to those works but I never asked when the engines were put in or anything like that.

210. Do you know of any other city of 50,000 inhabitants or upwards where the engines and exhausters are still there after being in use 25 years?

Ans. I am not prepared to say just now.

211. You have stated you have seen a number of holders taken down that were not 25 years old—how did that happen?

A. I had two taken down myself at St. Louis; the holders had been there some 5 or 6 years and we dismantled the whole plant; it was one of those opposition plants and we wiped them off the earth or forced them to sell out, and it did me a great deal of pleasure, too.

212. Do you know of any other holders taken down and rebuilt?

A. There was another one at Portsmouth, Va., that was let go without water and allowed to rust out; that was removed and taken out a few weeks ago and a new holder built in place of it; it was a case of sheer negligence.

213. You take great pleasure in wiping out opposition plants, do you not?

Ans. You bet I do.

214. Have you known of engines and exhausters being rebuilt or replaced that have been in service a comparatively brief period?

A. Not any very brief period but I have known it to occur and have done it myself at the Laclede works where it was too small and I put in a larger one; that has happened at several works where the exhausters were too small and I put in larger ones.

215. That happens frequently, does it not, when the business outgrows the apparatus?

A. I could not say how frequently but it does happen.

1810 216. That is true of holders, also, is it not?

A. Not to so great an extent; people usually build a holder with a little foresight.

217. You spoke in your direct examination of electrolysis and city councils being the only hazards to the gas business in your estimation. I presume hostile and ill advised legislation by city councils was in your mind?

Ans. Certainly.

218. And you consider that a serious hazard where it occurs, do you not?

Ans. Yes sir.

220. Do you not consider natural gas a hazard of the gas business?

A. To some extent, but not so much so.

221. Is it not a very serious hazard where they find natural gas?

Ans. It depends upon the quantity where they find it.

222. Suppose they found it in sufficient quantity to supply the demand of the place where it was found?

A. I could not tell that; I found in one place where they thought they had plenty of natural gas they put down mains but did not get the gas.

223. I am asking you about places where it is found in sufficient quantity to supply the town, is it or not then a hazard and a serious one?

A. I cannot answer that question because you cannot tell whether you will find it in sufficient quantity—you never know.

224. Don't you know of a great many plants that have been dismantled by reason of the discovery of natural gas?

A. I don't know of one.

225. Are you familiar with the conditions in Pennsylvania, West Virginia and Ohio, where natural gas has been discovered and its effect upon coal gas plants?

A. In a few cases—only a few cases.

1811 226. Under what conditions will coal gas become explosive?

A. When mixed with a sufficient quantity of air.

227. Is it possible to mix coal gas with air?

A. Certainly, it is done right along.

228. Would you consider coal gas mixed with air as a hazard of the coal gas business?

A. If you mix them in sufficient quantities—a small quantity of air is a benefit, no hurt to it.

229. You spoke of an explosion of some purifying boxes, did that occur because coal gas got mixed with air?

A. No sir, the purifying boxes did not explode but the purifying house went up; the boxes kept on working.

230. Did that happen because gas got mixed with air?

A. The gas was escaping from the boxes and a man went in with a lighted lantern and up went the house, but the boxes kept right on, were not put out of use.

231. Explosions do occur, do they not in gas works by reason of the fact that gas is there?

A. There are very few records of it; the one I mentioned is the only one of two that I know of.

232. Very few are left to report it, usually?

A. We hear about them.

233. How many gas explosions in and about gas works, or connected with gas systems, have been reported or recorded during the past three years?

Ans. I could not say, I don't remember.

234. This negligence which produced conditions under which this purifying house blew up is something that has to be taken into consideration, has it not, in connection with the gas business as distinct from the putty business?

A. I don't know why it should be.

234. In case there was any leakage in the condensing and
1812 scrubbing apparatus of a gas plant, that would fill the room with an explosive mixture, would it not?

A. Provided the works were not run right and nobody there to look after things.

235. If that occurred, it would do it, would it not?

A. Certainly.

236. If the stokers were running that room, would not there be somebody there all the time to see whether there was any leakage in the apparatus?

A. You ask me an almost impossible question but I will answer you just as you asked it, no. There is a great deal to be said on that subject.

237. Suppose there was some back pressure in the purifying boxes that blew the seals, it would bring about the same result, would it not?

Ans. Yes, sir.

238. That is a hazard which is peculiar to the gas business and gas apparatus, is it not?

A. Not if the superintendent attends to his business, but if he puts a hay marker in charge of gas works it might happen.

239. It happens often, does it not?

Ans. No, not often.

240. Are not the seals blown with comparative frequency in the plant of a gas company?

A. They were never blown in my experience in any works of which I had charge.

241. You are testifying from your personal experience?

A. From my personal experience.

242. I think you mentioned a holder in St. Louis that burned without cracking the glass across the street.

Ans. Yes, sir.

243. Did it damage the holder any?

A. Yes, it was destroyed, of course.

244. I wish you would name any plants in cities of 50,000 or upwards where the service pipes, in the majority of instances,
1813 are from 20 to 25 years old?

A. I would like to say before answering that question that I have not had much experience in cities of 50,000 inhabitants or thereabouts; my experience has been in the city of St. Louis, which is considerably larger than that, and in the city of Norfolk, at that time smaller, some places smaller, and New York city, which is larger, so if you bind me down to 50,000—Interrupted.

245. I said 50,000 inhabitants or upwards, I think that gives you considerable lee way.

A. I have known services that were in 20 years.

246. I mean the majority of the entire service system of any company in a city of 50,000 inhabitants or upwards?

A. I was not there long enough to tell that.

247. Then you don't know of any, do you?

A. From my own personal knowledge, of course not.

248. Will you name any plant in cities of 50,000 or upwards having retort houses from 25 to 40 years old and now in use?

A. Yes sir, in New York city, several of them; in St. Louis several of them; in Norfolk, Va., there is only one. In New York city, there are three retort houses, with which I have been connected, which have been used longer than that, and they are there today; in Norfolk one has been there and is there in use today; in St. Louis there are several that have been used more than 25 years still in use today.

249. What sort of gas is made in Norfolk?

A. I could not say what they make now there; they are prepared to make both coal and water gas.

250. Didn't you testify yesterday that you installed a water gas plant in Norfolk?

Ans. Yes, they have both coal and water gas.

251. Don't you know that the water gas plant there is in operation today?

Ans. I do not.

1514 252. My question is if you know of any retort house now in use in the manufacture of gas that has been in use for the past 25 years?

A. The retort house is there at Norfolk.

253. Do you know they are manufacturing coal gas in the retort house there today?

A. You didn't ask me that, or I would have told you at once; you simply said retort house for making gas; I don't think you said it was a retort house making coal gas.

254. Well suppose you answer it in connection with retort houses manufacturing coal gas?

A. Where they are making coal gas continuously, there are two of them certainly in New York city, and I am certain they have been making coal gas for more than 25 years and probably more than 30 years; then at the Laclede gas works in St. Louis, station "B" and station "A," there are four I am positive of; to the best of my knowledge and belief there are a good many others but I am not certain.

255. Calling your attention to the four you have named, what portions of the retort house in those instances are the same material as was there 25 years ago?

A. In the works at St. Louis every portion except probably some of the slate and nails that hold the slate on the roof; as to the houses in New York, I never saw any change; I often see the houses but never saw any change, the same walls and apparently the same roof is there.

256. Is it not a fact that the benches of today are too large for the retort houses built 25 years ago?

A. For some retort houses, they may be, but not for those I have named.

257. Is it not true as a general proposition?

1815 A. In little country places it might be but not as a general thing.

258. Is it not true in nearly all the larger cities?

A. No, that is where it is not true.

259. Is it not true in Cleveland?

A. I could not say about Cleveland.

260. Is it not true in Cincinnati?

Ans. No sir.

261. Is it not true in Minneapolis?

A. I have never been there.

262. Is it not true in St. Paul?

A. I have never been there.

263. Is it not true in Milwaukee?

Ans. I could not say.

264. Is it not true in Kansas City?

Ans. I could not say.

265. Is it not true in Indianapolis?

A. I think the same retort house is there that was there before; they have even got a wooden floor there, by the way, in the retort house; I mention that as a novelty.

266. Name, if you can, any plants in cities of 50,000 inhabitants and upwards, where they have the same purifying boxes now they had 25 years ago.

A. I have really been out of the business, except as a consulting engineer, for the last 8 months, or something like that, and a great many may have been renewed in that time without my knowledge, but I will answer you to the best of my knowledge and belief anyhow. I believe the same boxes are in use at Norfolk, although they have made an addition to the works since; the same boxes are still at the Laclede works in St. Louis at the old station also at station "A," and I believe the same boxes are still in use in a number of other works I have seen.

267. Can you name any others in cities of 50,000 and upwards?

A. With absolute certainty, I could not. To the best of

1816 my knowledge and belief the boxes at the old Manhattan station are still there and there may be the same boxes up at the old 14th Street station.

269. Any others?

Ans. I could not say for certain.

270. Is it not true that the sulphur in the boxes and other destructive acids will destroy the covers in a very short time?

A. That depends on what you call a short time.

271. In 10 years?

A. In about 10 years, and sometimes in less time.

272. If the sides are of wrought iron, the sides will be destroyed too, will they not?

A. I have never seen a wrought iron box.

273. You know they exist, do you not?

A. Of late years. I want to qualify my answer. I have seen of late years some purifyers called the "Chollar" purifyer, they have wrought iron sides, but it is a different apparatus altogether.

274. Have not you ever seen any wrought iron square boxes?

A. No sir, I never have.

275. Do you know whether or not they exist?

Ans. I do not.

276. You spoke in your direct examination of the sale of purifying boxes for scrap iron and putting in larger ones—what was the necessity for such sale?

A. You could not dispose of the boxes; the best price you could get for them would be to sell them that way.

277. What did you want to dispose of them for?

A. They were laying in the yard and we had no use for them; we had larger boxes; the boxes had been arranged long before I came there.

278. The plant had outgrown the size of those boxes?

Ans. Yes

279. Is it not true that what you have just stated with re-
1517 gard to outgrowing the size of the purifying boxes is true of nearly every piece of apparatus in connection with a gas plant in any growing city?

A. In a certain time, the business certainly outgrows it.

280. And apparatus has to be replaced that is not worn out?

A. Probably so, yes.

281. Is it not also true that all this apparatus in actual practice is replaced long before it is worn out by reason of new inventions and improvements in one place or another connected with the manufacture of gas?

A. I don't remember any just now.

282. Have not you see- benches of 6's thrown out and replaced by benches of 9's because some one thought that was an improvement?

A. No sir, never have.

283. You have never seen a bench of 6's torn down and replaced before the bench was worn out, have you?

Ans. No, I have not.

284. Have you ever seen benches of 3's or 5's torn down and replaced by benches of 6's, 8's or 9's?

A. Yes sir, I have seen benches of 3's torn out because they were worn out and they tore them down and put larger benches in; it would pay better to put in larger benches.

285. And you think it was more economical to put in new benches

A. Yes sir, and instead of filling the arches with a few retorts, build larger arches; I have recommended it myself.

286. Do I understand you to say there has been no general improvement or progress in the gas business in the last 25 years in the way of improved apparatus, inventions, etc.?

A. I have not said that; there has been a good many improvements made.

287. You stated a few minutes ago that you could not name a single instance where apparatus was taken out to put in im-
1818 proved apparatus, will you kindly reconcile that statement with the one you have just made for my benefit?

A. I don't remember of any apparatus having been taken out and others put in place of it, but where new additions were made or new works built they frequently put in other apparatus.

288. But you know of no instance where an old works has been remodeled or rebuilt along the line of new improvements or inventions?

A. Yes sir. Take the case of a works where they have no P. & A. tar condenser; before that was invented, we just took the tar out some other way; we found it would be more efficient to put in an old works a new P. & A. tar condenser.

289. Is not that true of every piece of apparatus used in a gas works?

A. Yes sir, from time to time, when additions are made.

290. Do you know of one scrubber being substituted for another?

A. Yes sir.

291. That is frequent in the history of a gas plant, is it not?

A. It depends upon what you would call frequent.

292. Don't you know that purifyers are often changed and larger ones put in?

A. Not often; in 15 or 20 years, something like that, it might happen; I know scrubbers that were put in in 1883 and they are running today, but there is no improvement on that.

293. Do I understand you to say in your last answer that there has been no improvement in the process of scrubbing gas since 1883?

A. Some claim that there has, but I don't believe there has been any real improvement made; there has been some improvements claimed. For instance, the Chauntlet Hewlen Standard washer scrubber. A friend of mine out in St. Joe, Mr. Mitchell, the superintendent there, improved that and made it better; that is
1819 an improvement; it is the same principle; in that way improvements have been made.

294. You admit then improvements have been made, do you?

A. I do not say it was not improved; he claimed it was improved; I have had no experience with it.

295. So far as you know then there has been no improvements that are improvements?

A. Yes, there have been improvements made in the gas business; I want it distinctly understood there has been improvements made.

296. If you were building a gas works to-day would you use the same apparatus that was commonly in vogue in 1883?

A. No sir; and since you speak of it, I would not build a works

like you have done here now to-day; I would put a works there that would make more money.

297. Exactly, I don't think you would build a works like that either. In your examination in chief you testified that the Standard washer scrubber would be more economical than the Chollar scrubber—which is in the complainant's plant?

A. According to my opinion it would be, yes sir.

298. Is the initial cost of the Standard scrubber more or less than the Chollar scrubber?

Ans. Much greater.

299. The Standard washer scrubber requires mechanical power to operate it?

Ans. Yes sir;

300. Does the Choller scrubber?

Ans. No sir;

301. The Standard scrubber is subject to more depreciation than the Chollar scrubber?

Ans. Some.

302. You say you don't know what is the life of a Chollar scrubber?

Ans. Yes sir;

303. Who is this man Chollar that invented this scrubber?

A. One of my former assistants, now engineer of the Laclede gas works at St. Louis.

1820 304. He succeeded you there, did he?

A. No sir; he did not succeed me; he has the position I formerly had but he did not succeed me; there was a man between him and I.

305. What was the tenure of office of the man between you and Chollar?

Ans. Very short—about 10 months.

306. Referring to your visit to Peoria about 10 years ago, to which you have testified—you came then as a witness for the old company in a condemnation suit, did you not?

Ans. Yes sir;

307. Concerning property at the plant of the old company?

A. Yes sir; as nearly as I remember now.

308. Did you then make any examination of the soil in the city at large?

Ans. Not to any extent; I went around as I did this time.

309. You have made about the same examination this time you did at that time when here?

A. No, the last time I made a more extended examination because I was here longer; this time I have not made any examination.

310. You spoke yesterday of a trench you had inspected on S. Adams street?

Ans. Yes sir;

311. The trench was being dug to lay steam pipe?

A. So I was informed.

312. Do you know whether the soil throughout the city is the — as the soil you there inspected?

A. I don't know except from what I have heard.

313. Are you acquainted with any high-pressure systems that use cast iron mains?

Ans. No sir;

314. Do you know of any high-pressure systems of gas mains in cities of 50,000 and upwards?

Ans. No sir;

315. In May 1899, was there anywhere in the United States a high-pressure system of artificial gas for general distribution?

A. No, not that I know of.

1821 315. What did you mean in your direct examination when you stated cast iron pipe was universally used?

A. I should have said generally used, not universally. I mean gas companies everywhere, so far as I know, use cast iron mains for street work.

316. What is the effect of the high pressure system on the cost of the distribution of gas?

A. Reduces it greatly.

317. Where do they get the high pressure?

A. With the compression pumps.

318. Are those pumps necessary in an ordinary system?

A. No, not compression pumps.

319. How does it reduce the cost of distribution, then?

A. The cost for mains is very much less.

320. Do you take the cost of mains into consideration in the cost of distribution?

A. Yes, the interest charge is something.

321. Did you take that into consideration in your cost of distribution as you gave it yesterday?

Ans. No sir.

322. You are testifying for the complainant today, are you not?

A. In this hypothetical case, I assume a normal gas works, normal gas mains; I did not take high pressure mains into consideration at all but mains the same as you probably use here.

323. Would you advise a high pressure system in Peoria?

A. I do not see why you should have it; I see no use for it in Peoria; probably if you wanted to go down to Pekin, though, it would be a different thing.

324. If my recollection is correct, you mentioned a gas system of 160 miles in your direct examination that had a leakage of but 1½ per cent.—tell us about that?

1822 A. It was the main system of the Standard Gas Light Company of New York City; the works were built under the supervision of Joseph Flannery and I succeeded him—no, not him direct, but when I had charge of the works, of course, I had charge of the main system and reports were made to me.

325. Do you know what the leakage on that system is today?

A. No, I do not.

326. Do you know what it was 5 years after it was built?

A. I don't remember how long it was built before I took charge there; I could not say about that, but I know what it was the year I had charge there.

327. What is the percentage of leakage in the gas plants in Massachusetts?

A. I don't remember, although I have seen an account of it.

328. Do you know what the Massachusetts commissioners state in regard to that?

Ans. I don't remember.

329. Don't you know they say it is about 11 per cent.?

A. No, I don't remember.

330. What is the percentage of leakage on gas plants as shown by the United States Census Report of 1900?

A. I could not tell you.

331. Don't you know it is given as about 11 per cent.?

A. No, I don't know that.

332. What part does condensation play in the matter of leakage and unaccounted for gas?

A. Mostly a general part; there is very little condensation of gas that is gas; I have known gas to be in a holder for months; there is no condensation from that; what is usually called condensation is, gas being stored over water water vapor arises and naturally goes along into the mains and it is precipitated there and pumped out.

1823 333. Has that any effect on the leakage?

A. Not as vapor; you would find it difficult to condense gas to liquid under the ordinary pressure; it is not condensed gas.

334. You mean by that if it is a true fixed gas.

Ans. Yes.

335. But the feature you speak of now, as I understand you, would make no difference in the registration at the holder or at the consumers' meter?

A. No sir, because this water vapor gets into the gas after it has passed the station meter and it would not make any difference in the consumers' meter—it would not swell the bulk in it.

336. Is gas as commonly made a true, fixed gas?

A. As we gas men regard it under ordinary conditions.

337. You are speaking now from your personal experience?

A. Yes, and study of the subject.

338. Does not every water gas plant make a certain amount of vapor?

Ans. Certainly they do.

339. Is not that condensed?

A. It is generally condensed before it gets to the station meter.

340. Is it always?

A. I could not say about always, but always in my experience; it ought to be if their apparatus is properly constructed.

341. You testified yesterday there was no leakage in the plant at Texarkana at all?

A. Not at the start—none reported at any rate.

342. You mean by that the amount of gas sent out by the holder was the same as the registration of the consumers' meters?

A. For the short time I had charge of it, yes sir.

343. Was any correction made for pressure and temperature?

A. No sir, the man I had down there didn't know how.

1824 344. How about the consumers' meters, did they run slow or fast?

A. As a rule they run slow.

345. If a gas company is so unfortunate as to employ a manager who cannot correct the pressure and temperature, might not he run into a good many coincidents of that kind where the registration of the station meter was the same as the registration of the consumers' meters?

A. He might indeed, but the rule is so simple he could quickly learn it.

346. Was this man you speak of employed by you?

A. He was employed by the Texarkana Gas Company but I sent him there in the first place and you might say I employed him.

347. You spoke in your direct examination of tests for leakage before mains are covered; would any such test guard against leakage caused by electrolyis?

Ans. No sir.

348. Or from expansion and contraction if they became affected?

A. No sir.

349. Or by any disturbance from the laying of sewers or water mains?

Ans. Certainly not.

350. There are a good many causes which produce leakage that could *could* not be guarded against by the test you spoke of?

A. Yes sir.

351. Is it not true also mains are often laid under conditions not entirely within the control of the company and which determine the depth, etc., on account of other pipes being in the street and things like that?

Ans. Yes, that is true.

352. What is light?

A. Well, vibration of molecules of the atmosphere; I am not scientific and I cannot use those expressions as nice as I have read them in this testimony; the description of light there is

1825 pretty fair, though, as I believe Mr. Little gave it, and I will adopt his description of the molecules of the atmosphere producing light. In fact, I have read that is the case; I have read where men have produced a certain amount of vibration in a dark room and made it light as day; I don't believe it but it was in the Scientific American that I read it.

353. What affect has the rapidity of vibration upon that?

A. The greater the rapidity, according to the theory, the greater the light. My knowledge of that is entirely from reading.

354. Do you mean the greater the light or the whiter the light?

A. The brighter.

355. When you say brighter, do you mean whiter?

A. I should assume so—yes, whiter, brighter.

356. As I understand you, the greater the rapidity the whiter the light?

A. I think so. I think that is the way I have described it.

357. What has the color of light to do with the power of diffusion of the light?

A. I could not answer that; I don't know enough just now, I think, to speak on that subject.

358. Don't you know the whiter the light is, the less its diffusive power?

Ans. No, I don't know that.

359. As a gas engineer, you are unable to state what effect the color of light has upon its diffusive power, are you?

A. I would say I cannot answer that now.

360. What is the difference between the primary intensity of light and its diffusive power?

Ans. I could not answer as to that.

361. Does a photometer take into consideration the diffusive quality of light?

A. It is the only instrument we have with which to measure light.

1826 363. Does the photometer measure the diffusive power of light or its intensity?

A. It measures the light itself, the power of the light, the quantity of the light.

364. Are you familiar with the spectrum photometer?

A. I have seen it.

365. Does not that take account of the diffusive power of light?

Ans. I have had no experience with it.

366. Don't you know as a matter of fact that two lights, having the same candle power as measured by the ordinary photometer, might have widely different diffusive power?

A. I am not aware of that, no sir.

367. Have you never met that fact in any of your electrical experience?

Ans. I have not.

368. Do you know of any gas company in any city in the United States of 50,000 or upwards that sends out 17½ candle power water gas for illuminating purposes?

Ans. I do not.

369. If coal gas from 17 to 18 candle power is the brilliancy usually sent out, why not send out the same candle power in water gas?

A. Well, the water gas people have made the claim that they give better light, more and a brighter light than coal gas men are

able to give; that is the argument that brings a water gas company into a town.

370. Don't you know that there are a great many companies that own both kinds of apparatus?

Ans. Certainly.

371. And send out 17 to 18 candle power of coal gas and 24 candle power of water gas?

A. Not at the same time, no sir, they mix it.

371. When they change from one to the other they send out a higher power of water gas, do they not?

1827 A. State that question again.

372. When a company owning a coal gas plant changes to a water gas plant, it sends to the same consumers it formerly served a 24 candle power water gas in lieu of the 17 candle power coal gas it formerly supplied, does it not?

A. In speaking of my own experience, I have changed from water gas to coal gas and from coal gas to water gas and my aim was, and my instructions from my president was to send it out as nearly as possible of the same candle power, which I did; with water gas you can change candle power very easily; you have it at your command.

373. Is that good practice?

A. Companies don't send out either coal or water gas; they mix it where the works are large.

374. Is it common practice to send out water gas of the same candle power as coal gas?

A. I don't know of any common practice about it at all.

375. Have not you testified that you know of no city in the United States of 50,000 and upwards that sends out 17 candle power water gas?

A. I did.

376. Yet, you don't know what the common practice is?

A. It is not common practice; the common practice is to mix the two gases and send them out together.

377. Is it not the common practice when oil goes up in price to shut down the water gas and make coal gas?

A. It would be my practice.

378. Why don't they reduce the power of the water gas instead?

A. Very often they limit it by law to a certain given candle power.

1828 379. When they don't limit it by law, why don't they?

A. I don't know of any cause.

380. Don't you know that water gas of 18 candle power is not satisfactory to the customers?

A. No sir, I don't know anything of the kind; I don't see why it should not be; if coal gas of 18 candle power is satisfactory, I don't see why water gas of 18 candle power should not be.

381. If you don't know anything about the difference in the intensity of light, I don't wonder at it.

A. I think I know a great deal about it; I don't think any man in the United States can stand up and teach me my business. I have discussed it in gas associations and I know what I am talking about here; I didn't come to Peoria to learn that.

382. What gas plant in the United States now have apparatus for manufacturing ammonia sulphate?

A. I saw a very large one at Everett near Boston.

383. Is not that a by-product oven plant?

A. Yes, but they make gas for sale.

384. Have they such apparatus in any regular ordinary coal gas plant you know of?

A. I don't remember of any now, no sir; I have seen them in England but not in the United States; they have no ammonia trust in England.

385. How much greater would be the value of the residual made if sulphate was manufactured at the Peoria plant instead of condensed ammonia?

A. I could not say positively what it would be in Peoria but I think from what I know about the manufacture of sulphate it would be quite a little; I think the freight on the liquor that would be saved and the cost of concentrating the fluid would pretty near make the sulphate.

1829 386. Where is the market for ammonia today?

A. I could not tell you, but it would not be hard to find.

387. Do you know the relative price of the liquor and sulphate in the market today in quantity?

A. Sulphate ranges from $56. to $60. a pound; the liquor is as little as they can pay for it to the gas companies,—that they will accept.

388. Do you know any ammonia works today that will purchase liquor when they will not purchase sulphate?

A. Yes sir, they will purchase it and run it into the river rather than let the gas company work it up.

389. It depends on the market price of the sulphate or liquor whether you want one plant or the other, does it not?

A. If it were left to me and the works were large enough, I would make a sulphate for in my judgment you would make more money out of it; you can store the sulphate and it don't waste. If it were my works, I believe I would make a sulphate, I think it would be policy.

390. Did you ever operate a plant where they had a sulphate apparatus?

A. No sir, but I built a sulphate works and instructed the men how to operate it.

391. In your estimate of the cost of gas in the holder, as stated in your direct examination, did you take into consideration the cost of a watchman about the works?

Ans. No sir.

392. Or the cost of a blacksmith around the works?

A. No sir, not little works like that, for you don't need one; you have men on day and night; I never had any watchman on any works I had charge of.

393. If coke, breeze and screenings can be sold at a sufficiently good price, it might often be better policy to sell those
1830 and use fuel coal, might it not, in the operation of a gas plant?

A. It certainly would be.

394. Those are conditions that have to be treated as they arise?

A. Just so.

395. In case but two benches were being operated, instead of 7, would that materially reduce the labor in the boiler room and the labor to take care of the ammonia still, the labor in the condensing room, in the purifying room and in the yards?

A. It would reduce it all except in the boiler room.

396. Would it reduce them all proportionately?

A. I think so.

397. If it was necessary to have one man in the purifying room and one man in the condensing room for five benches, would that be reduced if you operated but two benches?

A. If it were necessary but it is not necessary to have men in those places; it is not common practice; that is an impossible condition; it is not good practice but if that practice was done, of course, that would make a change.

398. I think in your list of distributing expenses you provided for one foreman, did you not?

A. In the distributing department, yes sir—a man in general charge of the distributing work at a salary of a thousand dollars a year.

399. And you would expect that foreman to do what?

A. When they would be putting in service, I would expect him to go and direct the men where to go and put in the service; in the first place, he should direct the different men under him what to do in the morning, keep their time and do some little work, that is, if they were all at work at different points he might have to go and take charge of one point himself. In a plant of that size, there is hardly enough work for a man to do just to sit in
1831 the shop and direct the men. There is some work for him to do; he should help take meter statements at the end of the month with the rest of the men, in order to get them in quickly; he also might occasionally repair a meter or test a meter; he could do that without getting very tired; they might send a meter in and he could test it, it being a matter of but a few minutes, and if it must be repaired set it aside and send it away.

400. You have testified that meters ought to be tested frequently, would you expect the foreman to do that?

A. I should expect the meters to be brought in every two or three years and tested; it is not much work to do that.

401. Do you expect one foreman to take care of 2400 meters in addition to his other duties?

A. Yes sir, if they have only 2400 meters, he could do it very well, for it has been done under my experience. It depends upon what you understand the foreman ought to do.

402. That would mean the testing of 2 or 3 meters a day, and you would expect him to do that in addition to his other duties?

A. There are certain times when they would be testing meters all day long; they might test 20 meters some days and some days none at all.

403. Would you expect him to examine meters on an average of 2 or 3 a day?

A. I would expect him to do all the work in connection with his department that he could do.

404. (Int. 403 repeated to witness.)

A. Yes, if that is necessary.

405. And you would also expect him to have a general supervision over the street mains and services?

A. No, the general manager has general supervision over that.

406. With regard to whether there are leaks or things of 1832 that kind?

A. He would direct the men where to go and what to do, certainly.

407. He would have charge of the men who were to lay the services and direct them in a general way?

Ans. Yes sir.

408. And also in the manner of setting the meters?

A. Well, he would give orders from the office where the meter was to be set and send out the men to set meters at such and such places; it would be done under his direction.

409. He would also set gas stoves or attend to it?

A. He would get the order and tell the men where to put it.

410. And the same way with regard to complaints that came in?

A. Yes sir.

411. And relieving the mains and services of nap-thaline and things of that kind?

A. If there was any, yes sir—no, with reference to nap-thaline, that comes under another head, if you had nap-thaline trouble except in service, that might take a special gang of men; it would not happen often.

412. Did you take that into consideration in your estimate of the expenses?

Ans. Yes sir.

413 Where does it come in a general way?

A. I have provided in the works expenses for some men.

414. Are those the special gangs you refer to?

A. If you have any such, you might not have any in 10 years.

415. Have you made provision in your estimate for any special gangs?

Ans. No, I have not.

416. You have provided in your distribution expenses for three assistants under the foreman whom you say should be gas fitters at $2.00 per day—can you get three skilled mechanics supposed to be gas fitters at $60. per month when common laborers are get-
1833 ting $1.75 per day?

A. I don't know what you would do about that.

Mr. TICHENOR: I object to the question; the record shows that common labor costs $1.50 per day.

The MASTER: I think that is true.

Mr. RITCHER: That is what common labor costs when this plant was built but the witness is talking about operating a gas works to-day and counsel on the other side has taken us right up to today against our protest, and I now ask the witness the question whether when common laborers are getting $1.75 per day he can get skilled mechanics and gas fitters at $2.00 per day or something less than $60. a month.

The WITNESS: You can very often do that; I have gotten men on the plea of giving them steady work who were good mechanics commanding $3.00 per day, who were anxious to get work the year round for $60. per month.

417. That was during panic times, I suppose?

A. No, in ordinary fairly good times and good men, too.

418. How many miles of main do you calculate one horse and wagon will take care of?

Ans. I have not calculated on that at all.

419. On what theory, then, do you allow a horse and wagon in the distribution expenses?

A. The mileage given was 26½ miles; I have compared it with works under my observation where we got along without any horse at all, but I think it would be a good thing to have a horse and wagon, as it would save labor.

420. What was that boy to do you have put in at $270. a year?

A. I put him in to run errands or anything like that.

421. When you were running a gas works without a horse and wagon, how did you get your pipe around, your gas stoves, etc.?

A. The men had to push it around and I don't approve of that.

1834 422. You had to pay for that?

A. Yes, a horse and wagon would be much cheaper.

423. How do you take care of night complaints with two telephones?

A. I don't know what your practice may be here about that, but after a certain hour at night I should not take any complaints.

424. Do you think that good practice?

A. I think it good practice to get people to understand it is dangerous to fool about gas at night; you should not go near it with

a light; a half hour after lighting up time I think I should shut up shop.

425. If a leak springs in the night, you would leave it until morning, would you?

A. I don't see any reason why a leak should happen except in broken main or something like that.

426. Don't leaks ever happen at night?

A. I don't remember of any at night time.

427. Are not there broken fittings in houses?

A. People usually know about that during the day and have them fixed before night comes.

428. In your judgment no leak should be stopped at night, then?

A. Yes, if they occur, certainly, but even in large works and small works, I have been connected with both, and they have no man at night to attend to complaints except a short time after the lighting up hour; if anybody else does it, they can do it, but it has never been done in the places I know of.

429. There might be an earthquake and knock down this court house?

Ans. That might happen, of course.

430. You have heard of serious explosions taking place in the evening owing to leaking of gas, have you not?

A. I don't remember of any just now.

1835 431. You don't remember of 10 people being killed in Chicago in an explosion within the last 6 months, do you?

A. I believe I read about it.

432. You would leave such a leak as that until morning if it happened after night, would you?

A. No, but I would not go near it with a light.

433. In your cost for distribution, where have you made any allowance for legal expenses of the company operating the gas plant?

A. I have not made any.

434. How about repairs, supplies for your distribution department?

A. In this case, I assumed the works to be new and in order, not requiring any.

435. Your theory is that new works never require any repairs?

A. Not immediately, they should not; still, if you do allow it, it would not amount to much, it would not affect the result one-half of one per cent.

436. These figures you have made in regard to the cost of gas in the holder and cost of distribution, you made with considerable care, did you?

Ans. I think I did.

437. Do you think there are any errors in them?

A. There might be; I am not infallible.

438. If there are any serious errors, would it shake your confidence in the rest of your figures?

A. If there are serious errors, but I will not believe there are any until I see them.

439. You testified, I believe, that the cost of gas in the holder here was 12.23 cents per thousand without adding two or three fractions, which I will give you in a moment. You then added ½ cent for purification, 1.14 cents for repairs and 1.02 cents to make 15 cents—am I right?

Ans. Yes sir.

1836 440. How much would you have to have added to make it 20 cents?

A. 5 cents more.

441. In regard to the distribution, you made the total cost 14.93 cents without the service?

A. That is what I made and I found a mistake and added it all together stable expenses and all and corrected it this morning, and made it 16.44; I found I had made a mistake in the addition.

442. When did you make that correction?

A. This morning before I came here.

443. After you had been on the stand today?

A. No, before I came on the stand.

444. Then your testimony on direct examination is one cent out of the way?

A. My figures are right but my addition was not right, I said 14.93 and it figures out 16.44.

445. Then when you stated the cost of distribution was 15.43, if you had been correct in your figures, it would have been 16.43?

A. Yes, the same figures are here yet, I have not rubbed them out or changed them.

446. That brings the total cost 1 cent more?

Ans. Yes, 16.44.

447. If still other errors are discovered in your figures yesterday, you would begin to doubt the accuracy of the result, would you not?

Ans. I don't believe I made any other mistakes; I might have put things in that I knew nothing about, of course, but I don't think I made a mistake in figures.

448. I think you testified it would cost about $5,000. to rebuild 7 benches of 9's?

Ans. I did not testify to that.

449. What is the fact about it, if you did not?

A. Different men might charge different figures.

450. What would be the range, would it not be somewhere between $5,000. and $7,000.—about $750. a bench?

1837 A. What would you put in?

451. New retorts?

A. You would leave the regenerative furnaces there and just put in new retorts?

452. Yes, and settings, of course.

A. Just above the fire floor?

453. From the furnace up?

A. I should say for a bench of 9's, it would be about $500. or $600. a bench; it might be more or less.

454. What is your judgment as a gas engineer about that?

A. I could not have any judgment on that at all; we have to ask the builders what they charge and we ask different builders and usually accept the lowest bid.

455. Didn't you sell retort material for two years?

A. I solicited material but never made any price on it, I simply reported that certain people wanted retorts to the office.

456. Then you are not familiar with the prices?

A. Except from my own experience, I have had benches built and know what they cost.

457. You have testified that retorts must be renewed on the average once in two years, taking your figures of $600. for 7 benches, would require $4200. to renew the 7 benches, that would be $2100. a year, would it not for renewing retorts?

A. Do you want me to make the calculation now; if you do and will give me some paper, I will do so; I cannot guess at these things and I don't know that it will be $600. either.

458. Don't you know the standard price today everywhere is $750.?

Ans. No sir, I do not, there is no standard price, I absolutely know that.

459. What would it cost to renew 7 benches at $600.?

A. It would be $5400.

1838 460. If they cost $750., how much would it be?

A. $6750.

461. Calling your attention to the cost of gas in the holder, I note you allow 1.25 cents for repairs—how much would that amount to per annum for repairs on the output you figured on?

A. From figures I made here, it would be $2,059.70. I want to say right here that in these figures—Interrupted.

462. If you will just answer my questions, Mr. Tichenor will give you a chance to explain on re-examination.

A. Perhaps so.

463. I don't want any speech in my cross examination.

A. You make me say things, perhaps, that are not so; the questions are certainly misleading to me.

464. I want you to tell the truth for us.

A. That is what I am doing.

465. Can a new plant run 6 years without repairs and maintain its efficiency?

A. That depends, it may do so very easily.

466. You stated yesterday there ought to be a fund laid up even then?

A. Yes sir, I should allow a certain amount for repairs right along.

467. What are the conditions under which gas is sold at 75 cents at Cleveland, Ohio, as compared with the conditions in Peoria?

A. I am not very well acquainted with the conditions at Cleveland but I know they get their coal for very much less than they get it here.

468. Don't you know they supply gas in large quantities to the surrounding factories manufacturing edged tools?

A. No, I don't know that, but of course they sell a great deal more gas than they do in Peoria, which helps to cheapen it some, too.

1839

469. Is the same true of Cincinnati, Ohio?

A. Yes, more so than at Cleveland, I think.

470. You spoke of a gas plant in Danville, Va., that plant is owned by the city, is it not?

Ans. Yes sir.

471. Do you know what the method of accounting there is?

A. I do not.

472. Do you know whether under their system of accounts the gas is properly shown in their municipal retort, or the cost of gas?

A. I only believe it to be so, I don't know it.

473. Do you know whether the undertaking is profitable?

A. The superintendent told me they did not run it for profit but just to maintain itself.

474. Do you know whether it maintains itself or not?

A. The superintendent said it did, that is all I know about it.

475. He was an employé?

Ans. Yes, a city officer.

476. What has been the history of the gas business with reference to the cost of distribution. In other words, has the cost of distributing artificial coal gas been increasing or diminishing?

A. The cost of distribution has been increasing.

477. That is peculiarly true of the past 10 years?

Ans. Yes.

478. Do you know what proportion of capital is now invested in the gas business as compared with ten years ago per thousand feet of gas made?—whether it is greater or less than it was?

A. I don't know enough about it, and I would rather you would not ask me; it is getting on very dangerous ground, I would rather have nothing to say about that.

479. Do you know what price per hour it paid in England and on the continent for retort house men?

A. No sir.

1840

480. Do you know what price is paid for engineers in England or on the continent?

A. I don't know what is paid per hour for any class of labor in Europe.

481. Including common laborers, foreman, superintendent, coal passers and every other kind of labor?

A. I know what salary some superintendents and engineers get—a few.

482. You are not acquainted with what laborers get per hour there?

A. I have investigated that and have figures but I don't remember.

483. Do you know what the sales per mile of main are in England?

A. No sir, it is different in different places, like it is here.

484. What is the range per mile of main of sales in England?

A. I do not know, it differs but as a rule I believe it is considerably greater than here.

485. Do you know whether or not they furnish services free of charge in England?

A. In some cities where I was recently they make it a point to furnish services free of charge, so the general manager told me.

486. I think you said this morning that the candle power in England was from 14 to 16 candle?

A. It is nearer that than anything else except in Scotland it is much higher than that.

487. Were you acquainted with Harvey W. Brown of Minneapolis, a gas man, in his lifetime?

A. I was not much acquainted with him but I knew him.

488. Was he in his life time considered a high authority on gas matters?

Ans. I don't remember, I have met him but I don't know
1841 much about him.

489. You don't remember his general reputation in the gas world?

Ans. No sir, I don't remember it now.

490. In general in the United States, in cities of the size of Peoria, what is the average amount of gas sold per annum per mile of main?

Ans. I don't know.

491. Do you know in a general way, can you state within limits what amount would be sold per annum per mile of main in a gas main system in cities of 50,000 inhabitants and upwards?

Ans. No sir.

491. As a gas engineer, have you never had to consider that in connection with the output of a plant?

Ans. No sir.

492. What is the general average consumption per meter per annum in cities the size of Peoria and larger cities?

A. That differs greatly.

493. What average would you give?

A. I should say from 22,000 up to say 30,000 per meter per annum.

494. As a general proposition, would you consider that gas much in excess of 30,000 per annum would be sent out in a city of the size of Peoria or larger per meter?

A. That would depend on circumstances. Cities like Cleveland,

which, of course, is larger and other places might have abnormal consumers who might use a great deal, like Bridgeport, Conn., for instance.

495. You refer to manufacturers who use it as a fuel?

A. Yes, something like that, where people use a great deal of it.

496. Otherwise, it would fall below 30,000 on the average, would it not?

A. On the average, it would run in certain cities I have known, some only 22,000, others 30,000, some 25,000 and some 26,000. I think 27,000 or 28,000 would be a very good average unless
1842 there was some extraordinary taker of gas; if there were then it might range above that.

497. In arriving at the expense of distribution, you figured on that basis substantially, I presume?

A. No, I don't know that I did; yes, I did partly do that.

498. Can you give an estimate upon further consideration of about the output per mile of mains under the same general conditions?

Ans. I don't quite understand.

499. For instance, a city has ten miles of mains, another 100 miles of mains, another 160 miles, in cities of 50,000 and upwards what does general experience tell you as a gas expert as to how many feet of gas are consumed per mile of main laid. In other words, if you were going to develope a territory and put down a mile of mains, how much would there be consumed there?

A. I have put down a mile of main in considering leakage, but never in that way and I have forgotten the figures.

500. How many meters would you expect to have as a general proposition in a city located as Peoria is, with its general surroundings, to have an output of 164,756,000 cubic feet of gas per annum?

A. I made some figures on that because I have seen the number of meters that were reported and it did not seem possible they could send that amount of gas through those meters, about 7,000 and some odd, if I remember right; that would call for more capital than you call for; I don't know whether you admit that or not; if you have more meters you have to have more capital.

501. You would expect to place those meters on a 26 mile main system, would you?

A. You could have them on a 26 mile main system if closely enough set.

1843 502. Would you expect it in Peoria?

A. It could be certainly if you would have most of the people to take gas.

503. Would you expect it under conditions such as exist and such as you testified to on direct examination?

A. I could not speak about the miles of mains, I would not like to say anything about that, but the meters I assume could be

placed in Peoria on that mileage provided most of the people took gas.

504. If, as a matter of fact, it required about 70 miles of mains instead of 26 to distribute 164,776,000 cubic feet of gas per annum in Peoria, that would increase the cost of the distribution of gas, would it not?

Objected to as immaterial, not based upon any showing presented by the record but directly against the showing they themselves have made.

The MASTER: I think it admissible because of the contract marked "Exhibit 32" being in evidence.

A. Certainly that would increase the cost of distribution.

505. And that would require more men to take charge of those mains, would it not?

A. It would hardly require more men but the cost would be increased largely for meters.

506. How much additional expense would there be in main?

A. A good deal more, I think.

507. Say 16 inch to 4 inch main?

A. I could not tell you that.

508. Suppose the present system of 26 miles was extended proportionately to 70 miles, making 44 more miles, what approximately would be the increased cost?

Ans. Quite a little additional expense.

1844 509. Can you guess at it within 10,000 or 20,000 dollars.

A. I would not like to guess at it but that in proportion, yes sir; if you would increase the mileage about three times, I would simply take my cost for mains and multiply it by three in that proportion.

510. What would that be?

Objected to as immaterial and irrelevant.

The MASTER: After reading this contract, "Exhibit 32," I do not think that question is admissible, except so far as it increases the cost of distribution of gas as ascertained at the station meter. I don't think the question of the cost of distribution through the mains—Interrupted.

Mr. RITCHER: This witness don't know anything about that contract but he has been testifying on an out put of 164,000,000, the same as though it was distributed through our system, and I have a right to show what the facts would be if but one third of it was distributed through our system.

The MASTER: I think you have a right to show whether or not he took into consideration whether it was being distributed through that system.

511. In your figures in regard to distribution, do you assume the 164,000,000 feet of gas was distributed through the 26 miles of mains of the complainant company?

Ans. Yes sir.

512. And also through the meters of complainant company?

A. Yes sir, I include the station meter in that.

513. In the event that a company situated in a city under like conditions as Peoria distributes the same amount of gas per annum through a system of 70 miles of mains, would the cost of distribution be greater or less?

Objected to as incompetent, improper and immaterial.

The MASTER: As the question is a general one, I do not
1845 think it objectionable.

A. Of course, it would increase it.

514. In a city situated in general as Peoria is, what would be the additional cost for the main system?

Objected to same grounds as before.

The MASTER: The witness may answer subject to the objection, although my present impression is it is incompetent.

A. Well, you said for me to guess at it, but I did not guess at it, I multiplied it; it is three times as much as I have from these exhibits.

516. What would those figures be?

A. The original figures were for 26½ miles; now, three times as much is 79½ miles, and the cost say it is of 16 inch, 12 inch, etc., if it is all in proportion like that, there would be an additional cost for mains of $291,590.40. That is assuming the highest figure with the mains all under pavement, the cost would probably be a little less; for services and meters it would be $156,901.50, that covers the meters and connections and service pipes; the two added together make a total of $448,491.90. Now, the depreciation on that would be $17,939.67 at 4 per cent.; that would be the additional sum that would have to be provided for. In fact, it would be more than that; I will correct that for mains; I did not take 4 per cent. for mains and services, I took 5 per cent. for depreciation. The average for the whole thing is 4 per cent. all together but for mains and services alone I assume 5 per cent. and the aditional sum that should be allowed for depreciation of mains and services and meters would be $22,424.59 at 5 per cent.

517. Such an additional investment would require additional taxes, would it not?

Ans. I suppose it would.

518. And additional labor in attending to the same?

Ans. Yes.

1846 519. If as a matter of fact in the case of the complainant company but 55 million feet of gas were manufactured per annum and 50,000,000 of that 55,000,000 was actually sold through the system, would that increase or decrease the cost of distribution per 1000 cubic feet?

Objected to as incompetent and immaterial.

A. If 55,000,000 were manufactured and 50,000,000 sold through the system, that would leave only 5,000,000 to be sold otherwise, is that right?

520. No, I mean the 5,000,000 would be leakage?

A. The cost would be higher per 1000 according to my figures, of coyrse, because you assume 10 per cent. leakage there.

521. Assuming the leakage the same as your figures, 5 per cent., would it be lower or higher?

A. It would be slightly higher.

522. Would the same be true of the cost of manufacture, cost in the holder?

Objected to same grounds.

A. Yes sir, some little.

523. Everywhere the cost would be increased?

A. If you make only 55,000,000 instead of 164,000,000 feet it would cost you somewhat more; it would cost you no more for retort house labor in proportion but in other respects it would a little more, a small amount.

524. About how much more per thousand cubic feet?

A. I would not like to say that; it would not amount to a great deal, but I do not want to guess at it, and I could not figure it here now, for I would have to take a great many things into consideration.

Redirect interrogatories by Mr. TICHENOR:

1. I will ask you to state if it is not true that the testimony
1847 you have given has been based upon your own practical experience also upon your knowledge from study, investigation and otherwise as a gas engineer?

Objected to as not proper re-direct and having been fully covered on direct examination.

The MASTER: I think that question has been answered by this witness at least 20 times.

Mr. TICHENOR: If that is so, I do not care to have it answered again.

The MASTER: I recall the fact that he has stated quite a number of times he was testifying not only from his personal experience but from his knowledge, study and experience as a gas engineer.

2. State whether or not these inclined retorts put in at St. Louis some years ago, concerning which you have testified, were successful or unsuccessful?

Objected to as not proper re-direct.

A. They were failures.

3. Why?

Objected to as immaterial, incompetent, irrelevant and not proper re-direct.

A. The benches were built with certain weak spots which I pointed out before we built them to the president of the company and the agent of the manufacturing company that put them in, but my advice was not taken; I was overruled and we built them as the design was sent us, showing how they should be built, and they were failures, and that failure kept many men from building inclined retorts in this country; in the old country they had the same experience, the most notable failure was in London, the chief engineer of that company told me himself they had failed.

Mr. RITCHER: I object to that as hearsay.

1848 The MASTER: Yes, that is incompetent.

4. What was the special feature of the construction through which the retorts failed, if you know?

Objected to as not proper re-direct.

A. The retorts were not supported in front to keep them from sliding out, they were built at an angle of about 32 degrees and they should have had bracing in front of them which I wanted done but I was overruled and it was not put in, and the retorts slid into the fire room from 2 to 4 inches, which of course cracked and destroyed the recuperative tubes of the furnace and in that way became failures. Another reason was we had labor troubles, the men thought the new retorts would put a great many men out of work and we had a good many strikes on the part of Knights of Labor in St. Louis. In fact, I had one on my hands shortly afterwards and some one exploded an exhauster one night by putting a cartridge or something under it, and then we had to stop going further with it; then shortly after that I received an appointment in New York as chief engineer of the Standard Gas Company, and left there, and there was nothing further done with it.

5. What is the effect of gas, after passing the purifyers and as it goes into the holder, upon the metal of which the holder is composed?

Ans. Preservative.

6. How, if at all, is the outside of the holder in good practice protected?

Objected to as not proper re-direct.

The MASTER: Do you claim that is re-direct, Mr. Tichenor?

Mr. TICHENOR: Possibly not, but I have a right to ask any questions that I omitted on direct examination, and I do not care whether it is considered as re-direct or original examination.

The MASTER: The witness may answer subject to the objection.

A. Paint.

1849 7. What effect has the atmosphere as it exists in the vicinity of gas works upon a gas holder which is properly protected by paint?

Objected to as not proper re-direct.

The MASTER: I understand Mr. Tichenor to say that these questions were omitted in direct examination and I am permitting the witness to answer for that reason.

A. It has no affect if properly protected; I have never seen any affect.

8. What kind of soil is most favorable for long life in pipe if there is any difference in that respect?

Objected to as not proper re-direct.

The MASTER: Yes, it is very clear in my mind that that has been gone over.

Mr. TICHENOR: I don't remember of his distinguishing between different kinds of soil; he said that certain refuse had a tendency to depreciate the pipes.

The MASTER: The witness may answer if there is any doubt about it.

A. Sandy loam soil.

9. State whether or not in making up your figures, concerning which you testified yesterday in chief and today on cross examination you allowed the entire aggregate for stable and office expenses shown by the record made by complainant company for the year ending September 1, 1901, in addition to the $20. per month?

A. Yes sir, that was in addition to the $20. per month.

10. State whether or not at the time you made up your figures and allowed $930. insurance you knew the record showed in Mr. Little's testimony that the insurance actually paid by complainant company was $300. per annum?

1850 Objected to as immaterial.

The MASTER: State what you took into consideration.

A. No sir, I didn't know anything about the insurance at all; I just assumed the insurance to be $930.

11. Look at the paper now shown you marked "Copy of Exhibit 20", October 1901," on the first sheet, the same consisting of 10 pages, and state whether or not that is one of the documents from which your figures were taken concerning which you testified yesterday and today also?

Ans. Yes sir.

12. That has the figures "1" at the top of the page also has it?

Ans. Yes sir.

13. Look at the paper now shown you, bearing the figure "2" at the tope of the first page, also marked "Copy of Exhibit 20", October" on the first page, and cocsisting of 10 sheets, and state whether or not that is the other one from which your figures were taken?

Ans. Yes sir, that is the other one.

14. State whether or not those two documents contain all the figures which you have used regarding the manufacture of gas about which you have testified?

A. Yes sir, all with reference to the manufacture of gas; those are the documents from which I got the 12 cents and the fraction of gas made in the holder—from those two documents.

Defendant's counsel offers in evidence the two exhibits identified by the witness, the first being marked at the top of the page, "Figure 1, Egner," and the second one marked "Figure 2, Egner" being copies of "Exhibit 20" and ask- that they be incorporated in the record.

The MASTER: Are not they or the original of them already in evidence?

Mr. TICHENOR: Yes sir.

1851 The MASTER: Why do you reoffer them?

Mr. TICHENOR: Because their correctness has been questioned.

The MASTER: I will not permit them to be again copied into the record unless it is pointed out wherein they are incorrect.

Mr. RITCHER: All I want is some testimony that they are correct copies.

The MASTER: The master will assume they are correct copies unless there is some inaccuracy pointed out.

Defendant's counsel offers in evidence the following documents:

1. A certified copy of a portion of the proceedings of the city council of Peoria, Ill., dated March 21, 1899, the same being marked "Exhibit 34."

2. A certified copy of a communication or petition from complainant company to the mayor and city council of the city of Peoria, dated March 21, 1899, the same being marked "Exhibit 35."

3. A certified copy of the record of a portion of the proceedings before the city council of the city of Peoria, Ill., under date April 18, 1899, the same being marked "Exhibit 36."

4. A certified copy from the records in the recorder's office of Peoria county, Illinois, of a certificate of the complainant company of an increase of stock to $2,000,000., the same bearing date January 29, 1901, and being marked "Exhibit 22."

The foregoing four documents when offered were objected to by complainant as incompetent and immaterial.

Said documents are hereto attached marked "Exhibits 34," "35," "36" and "22."

Adjourned subject to the call of the special commissioner.

1851*a* *Official Proceedings.*

Council chamber.

PEORIA, ILL., *April* 18, 1899.

A regular meeting of the city council was held this evening, all the members being present except Aldermen Bryan and Lynch.

Franchises Granted.

Both of the ordinances granting franchises to the People's Gas and Electric Company were read by the clerk.

The first one read related to the laying of gas pipes and the furnishing of gas.

Alderman Oden offered a substitute to article 3, which was adopted, naming streets more numerous than in the ordinance, in which pipes are to be laid.

Alderman Gorman offered an amendment, in which it was provided among other things, that pipes, mains and service pipes shall be laid as not to interfere with or injure the pipes or mains owned by the city of Peoria or by any other persons or corporations.

On motion of Alderman Carroll, the amendment was laid on the table by 8 ayes to 4 noes.

Ayes.—Aldermen Carroll, Dechman, Kellerstrass, Hecht, Louis, Oden, Peck, Thode, Wolschlag.

Noes.—Aldermen Gorman, McFadden, Powell, Thode.

Alderman Thode offered an amendment, which was lost, providing for a deposit with the comptroller of $10,000 as a guarantee of the faithful performance of the provisions of the ordinance.

Alderman Oden offered a substitute for Alderman Thode's amendment, which was adopted as an amendment to article 4, providing for the deposit of $5000 to be returned when $50,000 shall have been expended, and to be forfeited if the company does not begin work or supply gas in the time specified.

Alderman Gorman made a motion, which was not seconded, providing that the company be compelled to parallel the former gas company.

Alderman Oden offered an amendment to article 6, which was adopted, providing that whenever any street is about to be permanently improved by paving or macadamizing, the commissioner of public works shall notify said company of such proposed improvement, and within sixty days after such notification the company shall lay its mains including all service pipes and connections to the curb line at its own cost and expense.

Exhibit 36. I. C. Pinkney, special master.

1851*b*

By unanimous vote of 12 ayes, the ordinances as amended were adopted.

Alderman Carroll then moved a reconsideration of the motion adopting the ordinance, and on motion of Alderman Oden the motion to reconsider was laid on the table.

STATE OF ILLINOIS, } ss:
County of Peoria, }

I, Robert M. Orr, city clerk of the city of Peoria, do hereby certify that I am city clerk of the said city of Peoria, and the keeper of the records of said city, and that the annexed and foregoing is a true copy of a part of the official proceedings of the city council held on the 18th day of April, 1899, of which it purports to be a copy, as the same appears among the records of my office.

Witness my hand and the official seal of said city this 12th day of March, A. D. 1902.

[Seal City of Peoria, Illinois. Chartered A. D. 1845.]

ROB'T M. ORR, *City Clerk.*

1852 United States circuit court room, Government building.

PEORIA, ILLINOIS, MONDAY, *August* 18, 1902—10 a. m.

Parties met pursuant to the call of the special master.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin and Mr. R. C. Ritcher, appearing for complainant. Mr. Henry Mansfield, appearing for defendant.

BARTHOLOMEW M. LAWLER, called on behalf of the defendant, being first duly sworn, deposes and says:

Direct interrogatories by Mr. MANSFIELD:

1. State your name, residence and business?

A. Bartholomew M. Lawler; #1027 S. Washington St., Peoria, Ill.; am a saloon keeper.

2. How far is your place of business from the plant of the Peoria Gas & Electric Company?

Ans. I should judge about two blocks.

3. State whether or not you are a consumer of gas?

Ans. I am.

4. From what company do you get your gas?

A. The old gas company my bills come from—the Peoria Gaslight & Coke Company, I think; I am not certain as to the name but I know it comes from the old gas company.

5. Do you know how much you pay for the gas consumed by you in your place of business?

Ans. One dollar a thousand.
6. How long have you paid that rate?
A. I should judge about a year; I am not certain though.
7. Is that for all kinds of gas that is furnished or used by you whether for illuminating or fuel purposes?
Ans. Yes, sir.
8. Have you at any time since November 1900, paid any other or different price for any kind of gas furnished to you?
A. Yes sir; I have paid 75c. per thousand for fuel gas.
9. Do you remember when that was?
A. It was after August 1900; I started in there in August
1853 1900 but I didn't pay no attention to it.

Cross-interrogatories by Mr. IRWIN:

1. Do I understand you to say you have purchased fuel gas after November 1, 1901?
Ans. After August 1900.
2. How long did that continue?
A. We just used it in the fall of 1900.
3. You have not purchased any since about November 1, 1901, for 75c. per thousand?
Ans. I have not used it since then.

ANDREW PALMER, called on behalf of the defendant, being first duly sworn, deposes and says.

Direct interrogatories by Mr. MANSFIELD:

1. State your name, residence and business?
A. Andrew Palmer; #923 S. Washington St., am in the saloon business at the same number.
2. Are you a consumer of gas?
Ans. Yes sir;
3. Do you know from what company you obtain the gas consumed by you?
Ans. It is the Peoria Gas-light & Coke Company.
4. How far is your place of business from the plant of the old company?
Ans. 2½ blo-ks, probably 3—something like that.
5. What price do you pay for the gas so furnished to you by the Peoria, Gas-light & Coke Co.?
A. Why, I don't know; I never figured it by the thousand, but I know what I pay. (Witness referring to gas bill) The last bill I paid was 60c. for one month.
6. How much gas was furnished according to that bill?

Objected to as immaterial, the old company not being a party to this suit, and also as not the best evidence.

The MASTER: I think the objection that it is not the best evidence is a good objection and the last answer of the witness shows it is evidenced by a written instrument.

1854 7. Will you let me see the gas bill to which you have just referred?

Ans. Yes sir; (Witness hands bill to counsel) It is the last bill I have paid.

Defendant's counsel offers in evidence the gas bill produced by the witness.

Objected to as incompetent and immaterial.

Said gas bill was read to the master in the words and figures following, to-wit:—

"PEORIA, ILLINOIS, *July* 31*st*, 1902.

H. Palmer, 171 Tobias Sommer, 923 S. Washington street, to Peoria Gas-light & Coke Co., Dr.

For illuminating gas:

	1st meter.	2nd meter.
Present reading	00	8800
Last reading	00	8200
	00	600

Total..... 00 cubic feet at $1 per M.....60.

(Stamp)
Paid.
Peoria Gas-light & Coke Co.,
August 11, 1902.
George Alps.

8. How long have you paid for gas at the rate shown by the bill just read in evidence?

A. I don't know that; I never paid any attention to what I paid by the thousand; I have paid for gas since the 1st, of October 1901, but I don't know what rate I have paid; I never took notice of that; I know I have *cheap enough gas.*

ADAM KOHL, called on behalf of the defendant, being first duly sworn, deposes and says.

Direct examination by Mr. MANSFIELD:

1. State your name, occupation and place of business?

A. Adam Kohl; am manager of the Anhueser-Busch Brewing Association, Peoria branch, at # 1223 S. Washington street, Peoria, Ill.

1855 2. How far is that from the plant of the Peoria Gas-light & Co-Co.?

(Objected to as immaterial.)

A. About 3 or 4 blocks.

3. Is the Anheuser-Busch Brewing Association a consumer of gas in the city of Peoria?

Ans. Yes sir;

4. From what company, if you know, is the gas taken by the Anheuser-Busch Brewing Association?

A. So far as I know it is from the old gas company.

5. What price do you pay for the gas per thousand cubic feet so consumer by the Anheuser-Busch Brewing Association?

Objected to as immaterial, the old company not being a party to this suit.

A. The last bill, I believe, was $1.40 for 1400 cubic feet.

6. How long have you paid that price?

Objected to as immaterial.

A. I don't know exactly; a year about or a little longer.

THOMAS N. GORMAN, recalled on behalf of defendant, deposes and says:

Direct interrogatories by Mr. MANSFIELD:

1. You are the same Thos. N. Gorman who has previously testified in this case, are you not?

Ans. Yes sir;

2. In your former testimony you were asked with regard to the prices charged by the Peoria Gas-light & Coke Co., during the time you have been connected with the company, and at what time, if any, the changes were made in the price of the gas sold by that company?

A. I ought to have come prepared for that question; I have that information down in the office and I will go and get it.

3. Has the Peoria Gas-light & Coke Co., any contracts, or did it have, for furnishing gas to any consumer in the city of Peoria at any price other than the current price that is now, or was in

1856 existence since September 1, 1900?

Objected to as incompetent, immaterial and irrelevant.

The MASTER: I do not see the materiality of that.

Mr. MANSFIELD: I would like to have it answered.

The MASTER: The witness may answer subject to the objection.

A. Yes sir;

4. With whom were those contracts made, if you know?

Mr. IRWIN: We object to the question as incompetent, immaterial and irrelevant to the issues in this case. The mere fact that the old

Peoria Gas-light & Coke Co., may have different contracts with all its customers could not effect the issues in this case, that company not being a party to this case and it not being an issue in this case as to what price they can or might furnish gas.

The MASTER: I have already indicated my view as to the materiality of the testimony; the witness may answer subject to the objection.

A. There are two or three contracts in existence between the old gas company and its customers.

5. Do you know where those contracts are at the present time?

A. No, I do not.

6. Have you got those contracts in your office?

Ans. No sir;

7. Would they be in the possession of the parties to whom the gas was furnished?

(Objected to same grounds as before.)

A. Well, there would be a dupiicate copy of the contract; there are two copies made out, one retained by the company and one by the consumer.

8. Where are those contracts, if you know, that were retained by the company?

Objected to as incompetent, immaterial & irrelevant.

A. I don't know.

9. Are they in the office of the Peoria Gas-light & Coke Co.?

Objected to same grounds as before.

A. I don't know; I don't know there whereabouts.

1857 10. Will you examine the files in the office of your company and find out whether or not those contracts are in the files?

Objected to same grounds.

A. Yes sir;

11. And if they are there will you produce them in court this afternoon when you testify as to the other matters asked you?

Objected to same grounds.

A. Yes sir.

12. Do you know with whom those contracts were made?

Objected to same grounds.

The MASTER: He may answer if he knows without attempting to give the contents of the contracts.

A. I think there is a contract of that kind in existence between the company and the Hotel Grant; I don't recall now any of the others.

(Witness excused for the present.)

JOHN N. WALL, called on behalf of the defendant, being first duly sworn, deposes and says.

Direct interrogatories by Mr. MANSFIELD:

1. State your name and business?
A. John N. Wall, agent for the Chicago Brewing Company.
2. Where about in Peoria is the place of business of that company?
Ans. #1212 S. Washington street.
3. How far is that from the plant of the Peoria Gas-light & Coke Co.?

(Objected to as immaterial.)

A. I would consider it about 2½ blocks.
4. Is the Chicago Brewing Co., a consumer of illuminating gas?
A. Yes sir;
5. From what gas company does it obtain that gas, if you know?
A. The only way I can tell is by looking at the receipt I
1858 have just paid one (Witness referring to paper) The Peoria Gas-light & Coke Co.
6. How long have you been taking gas from that company?

Objected to as incompetent, immaterial and irrelevant.

A. Since 1894.
7. Did you during that period burn any gas furnished by the Peoria Gas-light & Coke Co., for any other purpose than illuminating purposes?

(Objected to same grounds.)
The MASTER: I do not think I will allow you to go back quite that far Mr. Mansfield; I think you ought to confine it to a period of not more than 5 years at least.

8. Have you at any time since 1897, used any gas for any purpose other than for illuminating purposes?

Objected to same grounds.

A. I have. I use it to keep the temperature in the cooling room right in the winter time burning it in what is commonly called a gas stove; we burn gas at night in a little stove to keep the temperature as it ought to be.
9. What price did you pay in 1897, for the gas so furnished you for heating purposes?

(Objected to same grounds.)

A. I could not tell that.
10. Have you any bill or receipt in your possession from which you could acquire that knowledge?
A. I have not in my possession at the present time; we send all our bills and receipts to headquarters every month.

11. Would the books of your company show what price had been paid for gas so used since that time?

(Objected to same grounds.)

A. The books would show the amounts but they would not show how many cubic feet of gas we used; the only way I could show that would be to send to headquarters and get the receipts.

12. How much has your company paid for gas per thousand cubic feet during the last 18 months, if you know?

1859 Objected to same grounds.

A. One dollar per thousand cubic feet.

HENRY W. BICKNELL, re-called on behalf of the defendant, deposes and says:

Direct interrogatories by Mr. MANSFIELD:

1. You are the same Henry W. Bicknell who has testified in this case before, are you not?

Ans. Yes sir;

2. How long have you been connected with the Peoria Gas-light & Coke Co?

A. A Little over two years; I came here in May 1900.

3. Are you acquainted with the price the Peoria Gas-light & Coke Co., has charged during the period in the city of Peoria for gas furnished for illuminating and heating purposes or fuel purposes?

Objected to as immaterial, incompetent and irrelevant.

A. No, from memory I could not give it; I could only give it from the records.

4. Would the records of your company disclose what prices have been charged for illuminating and fuel purposes and the times, if any, when a change was made in the prices?

Objected to same grounds.

A. Yes sir;

5. Will you examine those records and prepare yourself to testify with regard thereto this afternoon at 2 o'clock?

Objected to same grounds and also because the testimony would not be competent even if he did prepare himself in that way.

The MASTER: I don't know about your calling this witness again Mr. Mansfield, on the part of the defence; this has been the third time he has been on the stand to my recollection.

Mr. MANSFIELD: I guess that is right.

The MASTER: If you want him to go down to the office and get that information you can send him now and we will wait a few minutes.

1860 The WITNESS: Mr. Gorman has prepared the same thing, Mr. Mansfield; he has made up the schedule you requested made and what he will bring you will be the same thing.

6. Do you know of any special contracts in existence between the Peoria Gas-light & Coke Co., and the consumers of gas furnished by that company whereby it contracts to furnish gas at a different price than the current price now charged, or heretofore charged by the company?

Objected to as incompetent, immaterial, irrelevant, and a matter that could only be shown by the records in a competent way; the court has also decided the defendant has no right to these records and they cannot get indirectly what they cannot get directly.

The MASTER: I have already ruled on that this morning; I do not see the materiality of it; you will have to go further than this record has gone *fo* far, Mr. Mansfield, to make that inquiry competent.

Mr. MANSFIELD: Suppose we can show by these contracts that the Peoria Gas-light & Coke Co., has furnished gas in the city of Peoria at a much less rate than it is now being furnished—would not the presumption be that it was furnishing the gas at a profit?

Mr. IRWIN: We are not trying a case against the Peoria Gas-light & Coke Co.,

Mr. MANSFIELD: That don't make any difference.

The MASTER: I do not think that tends to show the cost of the manufacture of gas any more than that a railroad company gives an excursion at a rate much below the cost of transportation generally; in order to make this inquiry competent here you must go further; the master has heretofore ruled on this question and the court has sustained his ruling; you will have to connect the two companies in some way, show an identity of interest which would make what is done by one company competent evidence against the complainant and the record is insufficient in that respect; I do not think the testimony competent. The mere fact that a company may fur-

1861 nish gas to an individual at a certain price does not tend to establish the price; an isolated case is always objectionable as tending to prove any broad proposition like this is. For instance, it might be made to appear in this case that the complainant company furnished gas to its directors for nothing for their service as directors—you could not take that isolated fact as establishing the cost of the manufacture of gas any more than you can take the isolated case here of a few contracts made by the Peoria Gas-light & Coke Co. and establish the cost of making gas.

Mr. MANSFIELD: That is true, but suppose we can show there are 10 or 12 individual contracts outstanding, or suppose we can show there are 50 contracts outstanding, would it not be material.

The MASTER: It would not be material unless you can show an identity of interest between the complainant company and the Peoria Gas-light & Coke Co., What one individual may do in the way of

furnishing his wares to the public is one thing; what another may do is another thing.

Mr. MANSFIELD: Well, we would like to have the question answered subject to the objection.

The MASTER: The witness may answer subject to the objection but the court has already excluded that character of testimony and the master has also passed upon it. I want to say in connection with this objection that the mere knowledge of that fact alone I do not think is objectionable, but when the contracts come to be offered in evidence then an objection would be pertinent.

Mr. IRWIN: I do not think the fact is pertinent to the issues here; if the evidence in any form would be incompetent why does the fact become pertinent.

The MASTER: The mere fact as to whether or not there are contracts in existence tends to prove nothing; it is no evidence against anybody or no evidence of any fact except the existence of the contracts. Do you want the question answered, Mr. Mansfield?

1862 Mr. MANSFIELD: Yes sir;

The MASTER: He may answer subject to the objection.

A. I think there are five contracts in existence—contracts which were made before the people I represent came here—made by Thomas Coffee as president of the Peoria Gas-light & Coke Co.

7. Do you know with whom those contracts were made by the Peoria Gas-light & Coke Co.?

Objected to same grounds as before and also because it is a matter of record which the master and the court have held is incompetent evidence in this case; the witness has been advised heretofore by counsel for the Peoria Gas-light & Coke Co., to refuse to give the contents of records of the company and I think that same advice, were counsel for that company here now, would be given the witness at the present time.

The MASTER: The witness may answer subject to the objection.

A. The Hotel Grant; Planck Bros., laundry; Mr. Barnes, formerly editor of the Journal and the other parties I cannot remember who they were, but they were small ones that don't amount to anything.

MORRIS G. PLANCK, called on behalf of the defendant, being first duly sworn, deposes and says.

Direct interrogatories by Mr. MANSFIELD:

1. State your name and business?

A. Morris G. Planck; laundryman.

2. Where is your place of business now?

Ans. # 424 Fulton St.

3. Are you a consumer of gas in the city of Peoria?

A. Yes sir;
4. How long have you been?
Ans. Since 1893.
5. Have you any contract by and between yourself and any gas company in the city of Peoria as to the price to be charged for gas furnished you either for fuel or illuminating purposes?

1863 Objected to as incompetent, immaterial and irrelevant unless confined to complainant company.

The MASTER: I think he may answer whether he has a contract or not.

A. I have.
6. With what company is that contract made?

Objected to same reasons.

A. With the Peoria Gas-light & Coke Co.,
7. Have you that contract with you?
Ans. Yes sir;
8. Will you let me see it?
A. Yes sir; (witness hands counsel contract).
9. State the facts and circumstances which led you to enter into this contract by and between yourself and the Peoria Gas-light & Coke Co.?

Objected to as incompetent, immaterial and irrelevant.
The MASTER: I do not think it competent.
Mr. MANSFIELD: I would like to have the witness answer subject to the objection.
The MASTER: He may answer subject to the objection.

A. The contract was solicited by the company and as we found it to our advantage to make it we did so.

Defendant's counsel offers in evidence, for the purpose of being read into the record, the contract produced by the witness purporting to be a contract between the Peoria Gas-light & Coke Co. and Planck Bros., Laundry Co., dated April 7, 1900.
Objected to as incompetent, immaterial and irrelevant, and complainant also objects to having the same read into the record.
The MASTER: Do you expect to follow this up, Mr. Mansfield, and show this is not an isolated instance, but the general custom of the Peoria Gas-light & Coke Co.? That is, that it is the general rate charged to its consumers in the cityof Peoria?

1864 Mr. MANSFIELD: No sir; I am going to follow it up and show that at the time this contract was made and entered into the Peoria Gas-light & Coke Co., solicited people to enter into this kind of contracts and to the extent of that solicitation they admitted they could furnish gas to the citizens of Peoria at the price set forth in this contract at a reasonable profit.

The MASTER: I do not think it competent for the purpose of the inference; I do not think the fact that there are isolated cases where the company entered into contracts to furnish gas tends to prove the cost of the manufacture of gas and, I think, when you undertake to prove isolated cases you thereby preclude the idea of a general custom and it is only that feature of the case I think competent; I do not mean to be understood as intimating you cannot call anybody connected with the company and prove they can make gas for 75c. or less, but I hold you cannot offer contracts with individuals for the purpose of establishing the cost of the manufacture of gas.

Mr. RITCHER: I think the rule is general as the master states, but I think it astounding when it is with reference to another company not a party to this suit.

The MASTER: Yes, I think it comes clearly within the rule that proof of isolated cases is never competent to prove a general custom

Mr. MANSFIELD: The defendant thinks it important and would like to have the contract go in evidence subject to the objection.

The MASTER: I cannot exclude it if you insist on the offer and it may go in subject to the objection.

Mr. MANSFIELD: We then offer the contract and ask leave to substitute a certified copy for the record in place of the original.

The MASTER: Have you any objection to the substitution of a certified copy gentlemen?

Mr. IRWIN: Yes sir;

The MASTER: Then read the contract into the record, Mr. Mansfield, subject to the objections made. 1865

Whereupon said contract was read to the master in the words and figures following, to-wit:—

No. —.

A Contract.

Gas at fifty cents.

In consideration of being supplied with gas for light and fuel purposes at the rate of 50 cents per one thousand cubic feet by the Peoria Gas-light & Coke Co., of Peoria, Illinois, we hereby agree to take what gas we may require at premises No. 223–225 S. Mad. Ave., and new address if we move, Peoria, Illinois, for a term of 3 years from April 1, 1900, and pay for same monthly at said rate at its office on or before the 10th day of the month following in which the gas was used.

(Signed in duplicate) PLANCK BROS. LAUNDRY.

Address, 223–225 S. Mad. Ave.

Accepted by the Peoria Gas-light & Coke Co.

THOS. COFFEE, *Pres't.*

Peoria, Illinois, April 7th, 1900."

MILO PROCHAZKA, called on behalf of the defendant, being first duly sworn, deposes and says.

Direct interrogatories by Mr. MANSFIELD:

1. State your name and business?
A. Milo Prochazka; hotel business.
2. Are you a consumer of gas in the city of Peoria?
Ans. Yes.
3. From what company do you obtain the gas used by you?
A. From the Peoria Gas-light & Coke Co.
4. For what purpose do you use the gas so furnished?

Objected to as incompetent, immaterial and irrelevant.

A. For light and for fuel.
5. Have you any contract made and entered into by and between yourselves and the Peoria Gas-light & Coke Co., relative to
1866 the furnishing of gas?

Objected to as immaterial, irrelevant and incompetent.
The MASTER: He may answer whether he has a contract or not.

A. Yes sir;
6. Will you let me see that contract?
A. (Witness hands contract to counsel.)
7. Are you a member of the firm of Chas. Prochazka & Sons?
A. Yes sir; I am his son and one of the firm.

Defendant's counsel offers in evidence the contract produced by the witness, for the purpose of reading it into the record, purporting to be a contract by and between the Peoria Gas-light & Coke Co. and Chas. Prochazka & Sons, dated March 30, 1900.

Objected to as incompetent, immaterial and irrelevant.

The MASTER: I suppose this contract is of the same character as the contract just offered in evidence between the same company and Planck Bros. Laundry?

Mr. MANSFIELD: Yes sir;

The MASTER: The ruling will be the same as it was with reference to the Planck Bros. contract.

Whereupon said contract was read to the master in the words and figures following, to-wit:

No. —.

A Contract.

Gas at fifty cents.

In consideration of being supplied with gas for light and fuel purposes at the rate of 50 cents per one thousand cubic feet by the Peoria Gas-light & Coke Co., of Peoria, Illinois, we hereby agree to take what gas we may require at premises No. 300–302–304–306

S. Adams—the Grant hotel, and new address if we move, Peoria, Illinois, for a term of 3 years from April 1, 1900, and pay for same monthly at said rate at its office on or before the 10th, day of the month following in which the gas was used.

(Signed in duplicate) CHAS. PROCHAZKA SONS.

1867 Address prop'rs the Grant hotel.

Accepted by the Peoria Gas-light & Coke Company.

THOS. COFFEE, *Pres't*,
By T. N. GORMAN."

THOMAS N. GORMAN, re-called on behalf of defendant, deposes and says:

Direct interrogatories by Mr. MANSFIELD:

1. Are you prepared now to testify as to the prices charged during the last 5 years for gas by the Peoria Gas-light & Coke Co.?

Objected to as incompetent, immaterial and irrelevant to the issue in this case.

A. I have been instructed by the attorney of the Peoria Gas-light & Coke Co. not to answer the question and under those circumstances I refuse to answer.

2. You were asked when on the stand before if you knew or could obtain from any books or records in the possession of the Peoria Gas-light & Coke Co., what were the prices charged by said company for gas furnished to consumers used for illuminating and fuel purposes respectively. Are you at this time prepared to answer as to the prices charged by said company during the last 5 years and the changes in prices, if any, so made by said company?

Objected to as incompetent, immaterial, irrelevant and not the best evidence, the record being the best evidence.

The MASTER: The witness is simply asked if he is prepared to answer as to the prices. He may answer this question subject to the objection.

A. Acting under the instructions I have referred to in my former answer, my answer would be, that I am not prepared to answer any questions relating to the business of the Peoria Gas-light & Coke Co.

3. Could you, by an examination of the records of the Peoria Gas-light & Coke Co., obtain the necessary information to enable
1868 you to testify as to the prices charged by said company during the last 5 years for illuminating gas and fuel gas respectively, and also as — the changes that have been made, if any, by that company in the prices so charged by it?

Objected to as incompetent, immaterial, irrelevant and not the best evidence.

The MASTER: It does not appear from any answer this witness has made that he does not possess that knowledge without any further examination; he simply has declined to answer the question on the advice of counsel.

4. Have you a knowledge as to the prices that were charged by the Peoria Gas-light & Coke Co., for the last 5 years for gas furnished by said company for fuel and illuminating purposes?

Objected to as incompetent and immaterial and also because if the witness had the knowledge it would not be competent, not the best evidence.

The MASTER: I do not think, gentlemen, that is a matter within the exclusive knowledge of the records, or the knowledge of this witness; I think it is a matter of public knowledge and public information.

Mr. MANSFIELD: The fact of the matter is we can prove it in another way but we simply want to get it into the record.

The MASTER: If it has been charged to the public the public has as much knowledge of it as this witness; but, Mr. Mansfield, let me suggest to you, what may have been a uniform charge to the public is one thing; if you are seeking by this witness to prove what has been charged to particular individuals that is another thing.

Mr. MANSFIELD: I am seeking now to prove what were the current prices charged by the Peoria Gas-light & Coke Co., during the last 5 years for both illuminating and fuel gas—charged generally.

The MASTER: The witness may answer subject to the objection.

A. My answer with regard to that will be the same as my
1869 answer has been to the other questions. Do you want to know if I could give that information?

5. Yes sir.

Ans. Yes, I could give it.

6. You have that information within your own knowledge?

Objected to as immaterial.

A. I have it from knowledge I have acquired from the position occupied by me with the company.

Mr. MANSFIELD: The defendant insists upon an answer to the question.

The MASTER: The master has ruled on it, but the witness declines to answer on the advice of counsel. Now, if it turns out you cannot make this same proof by a number of witnesses that have knowledge of the facts as fully as this witness has, then the master might be willing to certify this matter to the court if you desire to carry it there.

Mr. MANSFIELD: The only thing is it would take numerous witnesses to prove it and it would seem to be a great saving of time and

expense to have this witness answer it now. I would like to have the matter decided by the master.

The MASTER: The master has already decided it so far as he can decide it.

Mr. MANSFIELD: We would like to take this matter before the court then.

The MASTER: You will have to wait until the 1st, of September.

Mr. RITCHER: If we can agree on what the fact is I am willing to stipulate what the prices were; I do not think this witness ought to testify to it over the advice of the attorney of the company; I think we can find out from general information, between now and the next hearing, what those prices were and stipulate as to that.

Cross-interrogatories by Mr. IRWIN:

1. You have testified you have been instructed by counsel for the Peoria Gas-light & Coke Co., to refuse to answer any ques-
1870 tion pertaining to the business of the Peoria Gas-light & Coke Co., I will ask you who that counsel is you refer to?

A. John S. Stevens, of Peoria, Ill., a partner in the firm of Stevens, Horton & Abbott of this city.

2. You have stated in your direct examination heretofore and a few minutes ago at this hearing, that you were able to answer the question from the information you had received from your position with the company—was that information obtained from the records of the company?

Ans. Yes sir;

Re-direct interrogatories by Mr. MANSFIELD:

1. At the same time you could testify to that from your own knowledge at the present time, could you not?

Ans. No sir;

2. You have knowledge of those facts, have you not?

A. I have knowledge of the fact but not sufficient from my own memory without referring to the books of the company to be able to give the information asked for concerning prices; it was a kind of a case of jumping jack for a while with regard to prices and a man would have to have a wonderful memory to recall them.

Adjourned by agreement to meet at the directors' room of the Equitable Trust Company, in the National Bank building, #152 Monroe St., Chicago, Ill., on Tuesday, August 19, 1902, at 10 o'clock a. m.

Directors' room, Equitable Trust Company, Nat. Bank bldg.

CHICAGO, ILL., TUESDAY, *August* 19, 1902—10 a. m.

Parties met persuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin and Mr. R. C. Ritcher appearing for complainant. Mr. Henry Mansfield, city attorney, appearing for defendant.

LYMAN A. WALTON, called on behalf of the defendant, being first duly sworn, deposes and says.

Direct interrogatories by Mr. MANSFIELD:

1. State your name and business?

1871 A. Lyman A. Walton, vice president of the Equitable Trust Co.,

2. State whether or not you have been served with a subpœna to produce a certain trust agreement made and entered into by the holders of stock in the Peoria Gas & Electric Co., with John R. Walsh and Sumner R. Clarke as trustees and the Equitable Trust Co., of Chicago?

Ans. I have.

3. Have you that trust agreement in your possession?

Ans. I have.

4. Will you let me see it?

Ans. I cannot do it.

5. Why can you not do it?

A. It is a matter that concerns the Equitable Trust Company and our attorney has advised me I do not have to produce it in this matter.

6. Then upon the advice of counsel you refuse to produce it?

A. I do.

Mr. RITCHIE: May it please the master: As the attorney for the complainant in this suit I desire to renew the offer which I have made heretofore, namely, that I will produce a copy of that agreement without the signatures and will admit it has been duly executed by the Equitable Trust Co., by the managers and by sundry stockholders, and I will produce the original agreement for inspection by the special master so there can be no doubt that the copy offered in evidence is a true copy of the original. As attorney for the Equitable Trust Co., I think the trust company would violate its duty as trustee by revealing the paper with its signatures without an order of court.

The MASTER: Is this document called for now the agreement under which the stock was deposited with the trust company as trustee?

Mr. MANSFIELD: Yes sir. This is the trust agreement made and entered into of date December 19, 1900, is it not, Mr. Walton?

The WITNESS: Yes sir;

Mr. MANSFIELD: I think that identifies it. I would like
1872 to have an order on the witness by the master to produce the trust agreement mentioned in my previous question?

Mr. RITCHER: I object to the request as calling for something that is immaterial, irrelevant and incompetent.

The MASTER: This witness is a member of the board of directors of complainant company, is he not?

Mr. RITCHER: He has testified he is vice president of the Equitable Trust Company. I don't think he is a member of the board of directors of complainant company—are you Mr. Walton?

The WITNESS: No sir.

The MASTER: I do not think, under the stipulation of counsel, the defendant ought to require the witness to produce the original of this document except for the purpose embodied in the stipulation.

7. As vice president of the Equitable Trust Company you have that trust agreement in your possession?

Ans. I have.

8. And subject to being obtained by you if so ordered?

A. Yes sir.

Mr. MANSFIELD: We desire to except to the ruling of the master and reserve the question for the purpose of taking it before the court.

The MASTER: The ruling is made upon your right to ask the custodian to part with the possession of the original instrument.

Mr. MANSFIELD: I do not ask him to part with it but to produce it in court.

The MASTER: A certified copy is offered to you without the signatures subject to verification by the master.

9. Do you, in your capacity as vice president of the Equitable Trust Company, execute instruments and documents on the part of and for the Equitable Trust Company?

Ans. I do.

10. Did you, as such officer of the Equitable Trust Co., under and by virtue of the power, or any power that was obtained by the Equitable Trust Co., through or under that trust agreement
1873 made and entered into December 19, 1900, execute any other or further agreement by and between the Equitable Trust Co., and any other trustees or persons with reference to the property of the Peoria Gas & Electric Company in the city of Peoria?

Objected to as incompetent, immaterial and irrelevant.

The MASTER: It- materiality may appear; the witness may answer subject to the obtaction.

A. No.

Mr. MANSFIELD: That is all, Mr. Walton.

Mr. RITCHTER: I have a copy of the pool agreement of December 19, 1900, purporting to be between the owners and holders of shares of the capital stock of the Peoria Gas & Electric Company, parties of the first part, and Sumner R. Clarke and John R. Walsh, as managers, parties of the second part, and the Equitable Trust Company of Chicago, Illinois, a corporation, organized under the laws of the State of Illinois, party of the third part; the copy appears to have been executed by Sumner R. Clarke and John R. Walsh, as managers, and by the Equitable Trust Company, and I will admit that the original was also executed by sundry stockholders of the Peoria Gas & Electric Co., and I offer the copy to the defendant, provided the same is accepted, in lieu of the original called for by Mr. Mansfield. I desire further to state that I am entirely willing that the master when he has inspected the original shall state whether or not more or less than three-fourths of the entire capital stock of the company purports to be represented by those signatures without stating the exact amount, if my former offer is accepted.

Mr. MANSFIELD: I object to the offer relative to the trust agreement as being immaterial and incompetent until the exception made to the ruling of the master is passed on by the court.

Mr. RITCHER: We admit that the offer is irrelevant and immaterial.

1874 (The master examines the original pool agreement called for.)

The MASTER: After an examination of the original trust agreement called for by counsel for defendant I am inclined to hold that the evidence is incompetent and immaterial.

Mr. MANSFIELD: We except to the ruling of the master. Have you the secretary's book here, Mr. Ritcher?

Mr. RITCHER: Yes sir;

Mr. MANSFIELD: Will you let me see it?

Mr. RITCHER: I will hand it to you under our stipulation; if you do not accept our stipulation formerly made you will have to fish for it some other way.

Mr. MANSFIELD: I understand that stipulation was agreed to by us previously; all we want to do is to offer those parts of the record that are unsealed until the master has examined the record.

The MASTER: The master has not yet examined the sealed parts of the record; you can offer such parts of the record as you desire that are unsealed and I will then examine the sealed portions of the record and if I think parts of it not offered are material I will call attention to it.

Defendant's counsel offers in evidence from the secretary's book of the Peoria Gas & Electric Company the following records:

1. The record of the first meeting of the board of directors contained on pages 6 and 7.

2. The proceedings of the board of directors held at the office of Harding & Miller, #211 Main St., Peoria, Illinois, on the 8th,

day of May 1899, contained on pages 8, 9, 10, 11, 12 & 13, with the exception of the portion sealed, subject, however, to the inspection of the master and to his report as to whether such sealed portions of the record are material to the issue in this case.

3. The proceedings of the board of directors of the Peoples Gas & Electric Company contained on pages 14, 15, 16, 17, 18, 19, 20 & 21, with the exception of that portion of the record which
1875 contains the by-laws of the company adopted at the meeting.

4. The proceedings of the stockholders of the Peoples Gas & Electric Company as appears on pages 22, 23, 24, 25, 26, with the exception of the certificate of publication attached to page 25.

5. The proceedings of a meeting of the stockholders of the Peoria Gas & Electric Company contained on pages 27 and 28.

6. That portion of the proceedings of the board of directors contained on pages 29 and 30.

7. That portion of the proceedings of the board of directors contained on pages 31, 32, 33, 34, 35, 36, 37, 38, 39, and 40, with the exception of the sealed portions of such record, subject, however, to the right of the master under the stipulation to examine and declare whether any portion of the sealed record is material to the issue in this case, and if so, such portions of the sealed record as are found to be material are hereby offered.

8. The minutes of the stockholders' meeting contained on pages 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50, the sealed portions thereof to be controlled by the stipulation in this case, with the exception of the notice of publication attached to page 45.

9. The minutes of a special meeting of the directors contained on page 51.

10. The minutes of a special meeting of the stockholders contained on pages 52, 53, and 54, with the exception of the notice of publication attached to page 53.

11. The record on pages 55 to 63 inclusive with the exception of that portion of the record that is sealed, which shall be governed by the stipulation in this case.

12. The minutes of the regular annual meeting of the stockholders contained on pages 64, 65 and 66.

13. The minutes of the regular meeting of the directors contained on pages 66, 67, and 68.

14. The minutes of a special meeting of the directors con-
1876 tained on pages 68, 69, 70, 71, 72, 73, and 74, with the exception of that part of the minutes which embody the by-laws of the company adopted at that meeting on pages 69, 70, 71, 72, 73, and 74.

15. Section 1, article 7, entitled "Dividends" on page 74.

16. Also that portion of the record contained on pages 75, 76 and 77.

17. The minutes of a special meeting of the directors contained on pages 78, 79 and 80.

18. The minutes of a special meeting of the directors contained on page 81.

(See pages 193–'4–'5.)

1877 Mr. MANSFIELD: I would like to have a stipulation that these are all the records of the complainant company.

Mr. RITCHER: Counsel for complainant certifies that the record book here presented contains to the best of his knowledge and belief all of the records of the meetings of the stockholders and board of directors of the complainant company whether the same be regular, special or otherwise. I know of no other records and believe there are none, and will further state that I believe the offers made by defendant's counsel includes all of the records of the regular or special stockholder meetings or meetings of the board of directors from the first meeting of the board of directors to the present time with the exceptions noted by counsel for defendant in making his offer of the records.

Mr. IRWIN: Counsel for complainant objects to all those portions of the record offered as incompetent, immaterial and irrelevant to the issue in this case, and if, on an inspection by the master, he finds any of the sealed portions of the record to be material in his opinion, the same objection is made to such portions of the record.

JOHN R. WALSH, called on behalf of the defendant, being first duly sworn, deposes and says:

Direct interrogatories by Mr. MANSFIELD:

1. State your name?
Ans. John R. Walsh.
2. Are you connected with the Akron Gas Co.?
Ans. Yes sir.
3. In what capacity?

Objected to as immaterial, incompetent and irrelevant.

The MASTER: I do not see the materiality of it.
Mr. MANSFIELD: It is preliminary.
The MASTER: The witness may answer subject to the objection.

A. I am a director.
1878 4. Are you not president of that company?
A. I believe I am.
5. Do you know at what price the Akron Gas Co. now furnishes gas to consumers in the city of Akron?

Objected to as immaterial and irrelevant.

A. I don't know.

Adjourned to meet at the Yates house, Syracuse, N. Y. on Friday August 22, 1902, at 10 o'clock a. m.

acted as a consulting engineer to gas companies and in what territories?

A. From about 1876, onwards up to the present time, mainly in Ontario.

9. To what extent, if at all, have you investigated and examined the plants of companies other than those with which you have been associated as you have testified?

A. Well, there are, I might say, almost scores of gas works in the United States I have visited whose working results I am more or less acquainted with and, so far as the statistics of those companies are available I am fairly familiar with their working results.

1880 10. What, if any, investigations have you prosecuted in foreign countries?

A. Well, as an old English gas man I have closely followed the results obtained in the British gas companies and am familiar from their published records as to what is being done in every detail of it.

11. State whether or not you are familiar with the details of structural work and also with the operation of gas works in this country and in Europe as well?

A. I am in every detail familiar with it.

12. For how long a period of time have you been reasonably familiar with the subject referred to?

Ans. For at least 30 years.

13. How long is it since you severed your connection with the Syracuse Gas Company?

Ans. Since October 1898.

14. And since that time have you continuously been associated with the Semet-Solvay Co.?

A. No sir; I started a chemical works in a special line that is now operating in this city.

14. How long have you been with the Semet-Solvay Co., in the capacity to which you have referred?

Ans. Nearly 1½ years.

15. In what business is that company engaged?

A. Well, the Semet-Solvay Company's main business is in the operation of coke ovens; that is to say, in the manufacture of coke and the recovery of the by-product; it is strictly a gas making business, and I might as well explain, that the Semet-Solvay Co. is a branch of the Solvay Process Co., but inasmuch as it is outside the line of business for which the Solvay Process Co., was organized or incorporated, the same men are incorporated under the title of the Semet-Solvay Co., for the operation of the by-product recovery ovens.

16. With what part of the business have you to do and have you since the time you became associated with that company?

A. Especially with the gas end of it.

Yates house, parlor "A."

SYRACUSE, N. Y.,
FRIDAY, *August* 22, 1902—10 o'clock a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin and Mr. R. C. Ritcher appearing for complainant. Mr. Henry Mansfield and Mr. F. H. Tichenor appearing for defendant.

THOMAS LITTLEHALES, called on behalf of the defendant, being first duly sworn, deposes and says.

Direct interrogatories by Mr. TICHENOR:

1. State your name and place of residence?

A. Thomas Littlehales; #715 E. Genesee St., Syracuse, N. Y.

2. What is your business?

Ans. Gas engineer.

3. How long have you been engaged in the gas business and how long have you been a gas engineer?

A. In 1866 I became a pupil of the engineer of the Crystal Palace District Gas Company in London, England; was subsequently manager of the West London Junction Gas Company, London, Eng., then for 24 years engineer and general manager of the Hamilton Gas-light Company, Hamilton, Ontario; then for nearly 3 years general manager of the Syracuse Gas Company, Syracuse, N. Y. at present
1879 I am adviser on gas matters for the Semet-Solvay Co., Solvay, N. Y.

4. Where is this company, to which you have just referred, located with reference to the city of Syracuse, N. Y.?

A. In the immediate suburbs of Syracuse.

5. During the time you have been connected with gas industries what part of the work have you performed?

A. I think everything around a gas works.

6. Specify generally, what ground you have covered in the performance of your duties in connection with gas companies as you have testified?

A. Well, I have done with my own hands almost every kind of work around a gas works up to its management.

7. State what, if any, experience you have had in the construction or reconstruction of gas works both with reference to the manufacturing plant and its pipe system?

A. I have reconstructed several gas works; among them, Hamilton, Ont., Brantford, Guelph, St. Catharine; I have built entirely new works and laid new mains, everything complete, in Barrie, Ont., and have at various times done consulting engineering work for several other companies.

8. From what period of time have you, to a greater or less extent,

1881 17. How extensive are the gas interests of this company coming directly under your charge?

A. Well, directly under my charge—none; I have no charge of them; I am simply an adviser on those matters—I wish to make that distinction. The best idea I can give you is that in the various plants of the company we carbonize—I think it is—1200 tons of coal a day.

18. Will you explain in a general way the character of this industry to which you have referred?

A. The Solvay Process Co., requires for its own use, to burn 500 tons of lime a day and upwards, a large quantity of coke and it went into these coke ovens mainly to supply that coke; up to the time of the introduction of what is known as the by-product recovery ovens nearly all the coke was made in what is known as beehive ovens, in which all the tar, all the ammonia and all the gas was entirely wasted, and when this particular form of by-product recovery oven was perfected in Germany, the Semet-Solvay Co., secured the rights for this country of that oven to operate the same; my special duty with the company was to show them how the gas from this particular form of oven could be made available for general public use.

19. What use is made of the by-products from your process as the business is prosecuted at Solvay?

A. The tar is distilled into its various products, benzole, carbolic acid and we are now starting an industry to make picric acid, that is used in making picrates for smokeless powder, and the ammonia is one of the vital necessities to the Solvay Process Co., in the manufacture of soda ash; it is the agent that produces the reaction.

20. What disposition is made of the gas?

A. The gas at present in Syracuse is simply used under the boilers, or under the caustic pots, or other appliances, simply
1882 to get rid of it; at some of the stations there is an excess over what they want and it is simply absolutely wasted; in Detroit, we have a plant there, and a contract has just recently been made with the Detroit Gas Co., to supply them from our Detroit ovens gas to the extent of two and a half million cubic feet per day.

21. As an adviser have you jurisdiction over all the various plants of the Solvay Process Co., in this country?

A. Yes sir; I think on any new departure in the matter of gas I would be consulted on it. I wish it distinctly understood I am not in active charge of the business; I am simply there as their adviser on the technical portion of the business.

22. State whether or not you know the processes under which gas is produced in the United States?

A. Yes, I think I may claim to be familiar with practically all the processes in general use.

23. How many are there in general use in this country?

A. Well, they might be divided into three main divisions, viz:—coal gas, water gas and oil gas, leaving natural gas, of course, out of

consideration. Then, of course, there are a great many companies running a combination of coal and water gas, and of the water gas processes, while they are all based upon one main principle, there are a number of variations under different names, but practically come down to the same general principle, known as the Lowe process; there are many forms of it, namely, Wilkinson, Flannery and various others.

24. State whether or not you are also familiar with the cost, production and distribution of gas from the different processes as the business is carried on in the United States?

A. I will say generally as from coal and water gas I am thoroughly familiar with it.

25. And have you been for some years past?

A. Ever since water gas was introduced.

26. From the standpoint of economy in production, which
1883 of the processes mentioned by you takes precedence?

A. That is largely a matter of local conditions. For example, nearness to coal mines, or nearness to oil fields—largely a matter of local conditions, and also the market for the residuals.

27. State whether or not you are familiar with the life of the various kinds of apparatus, mechanical appliances etc., entering into the formation of a complete gas plant?

A. I am thoroughly so.

28. Taking the manufacturing plant itself, will you please state the life of the various items which constitute it?

The MASTER: Are you referring to water gas or coal gas?

Mr. TICHENOR: I am referring now to coal gas plants only.

A. Of course different portions of a plant will have different periods of life and it will depend largely upon the character of the original installation, and whether it is a growing or non-growing locality, as to what the life of a plant will be. For example, in a rapidly growing place, if the works were made too small to start with, part of the plant would soon be outgrown, but if a proper view was taken with a view to future contingencies, the life would be much larger, because in one case apparatus would be discarded before it was half worn out and in the other case it would have a chance of living its life out. Now, a gasholder under fair conditions should have at least 50 years of life; I would consider retort arches should have from 20 to 25 years' life; the retorts themselves will perhaps have two years' life and so on; each plant varies largely, but taking the average I think it would be perfectly safe to assume from 20 to 25 years' life, one thing with the other. As an illustration, I think, I may say, that only a few months ago I happened to be valueing a gas plant that was being taken over by a city from the gas company and amongst other parts of the plant was a gas-
holder that had been built in 1851—this was in 1901 that the
1884 examination was being made—that holder had been in operation 50 years and the superintendent of the gas com-

pany, the man who built the holder and the experts on the other side, all contended that holder should last as long as it had lasted.

29. In what condition did you find that holder at the time of your examination?

(Objected to as incompetent and immaterial.)

The MASTER: I do not think it material or competent either being an isolated case.

Mr. TICHENOR: I would like to have the witness answer.

The MASTER: He may answer subject to the objection.

A. Good for 20 years' life.

30. Where was the gas works to which you have just referred?

Objected to same grounds.

The MASTER: He may answer subject to the objection.

A. At Kingston, Ontario.

31. What is the life of the purifyers, exhausters and such mechanical devices as are necessary in the operation of a gas works?

A. I myself put in a set of exhausters and—Interrupted——

Mr. RITCHER: We object to the witness stating an individual case in answering a question of this kind.

The MASTER: I think the question calls for the general rule.

The WITNESS: Is not what I know from personal experience better than anything else?

Mr. RITCHER: If you don't know anything else, yes sir;

The MASTER: The question calls for the general rule in that regard and counsel has already ascertained how you know it to be the rule.

A. I would place their life at from 20 to 25 years.

32. To what part are you now referring?

A. Exhausters and purifyers.

33. What portions of the purifyers are more especially sub-
1885 jected to depreciation?

A. The sides of the covers.

34. To what is that due and what protection is there from it, if any?

A. It is due to the fact that the water of the seal in which the lid drops to make it gas tight is largely impregnated with ammonia and sulphur which causes a rapid oxidation of the side plates and those will have to be renewed perhaps in 10 or 15 years unless the precaution is taken to keep the sides well greased at the time the purifyers are changed to prevent that oxidation.

35. To what extent will that extend the life or retard deterioration in the parts to which you have just referred?

A. It simply means a difference perhaps of 10 or 15 years—the care taken to preserve them or let them go may mean 10 or 15 years added to the original life easily.

36. Then your first statement had reference to the life of those

parts under ordinary conditions when those precautions were not taken?

A. No sir; under the average conditions they run; I would think it would require careful management and careful attention to secure 20 to 25 years of life out of the sides of purifyers—it would require careful management to do that; with neglect they would go sooner.

37. What is the life of the engine in such works?

A. 25 years easily.

38. State whether or not the service demanded of an engine in a gas works is greater and more destructive in its effects than that ordinarily imposed upon like engines?

A. I would not consider it in the slightest degree more than an engine under average conditions, for the simply reason that an engine is always well greased and that coat of grease or oil, as
1886 the case may be, prevents it from the oxidation which would otherwise take place—that is why.

39. To what especial unfavorable influences are the buildings themselves of a gas works subjected so far as pertains to depreciation, if there are any such?

A. Well take the roof of a retort house for example; the constant steam arising from the quenching of the coke, which contains more or less sulphurous vapors, and again converted into sulphuric acid, probably attacking the roof—that is one thing; then around the other plant the ammonia is very active and corrosion of metals has to be guarded against, of course, by proper coating, or painting of the metal; but the destructive influences are entirely from the outside.

40. What do you mean by that?

A. I mean to say the gas itself, from the beginning to the end, there is very little wear or injury either from chemical or other influences from the inside; all the wear and tear takes place from outside influences which can be gotten at and guarded against to a large extent.

41. State whether or not it is practicable to protect metal work from the influences to which you have referred?

A. Undoubtedly to a very large degree by coating either with tar preparations or anti-corrosive paint.

42. State whether or not the same practice lengh*t*ens the life of services?

Ans. Certainly, undoubtedly.

43. To what extent?

A. It is difficult to say because it would be so indefinitely prolonged by careful coating.

44. If service pipes are laid in sandy or gravelly soil, or in clay and are protected in the manner to which you have referred, what would be their ordinary life?

1887 A. You ask about two soils totally different; I should say an unprotected service would last probably 20 years in clay whereas in sand or gravel that same pipe would be destroyed in

much less time because the clay, being compact, keeps it from the oxidation, from being alternately wet and dry; I would consider in an ordinarily loamy sand or gravel an unprotected pipe would have about a 15 year average life, and a protected pipe may be would have 25 or 30 years' life.

45. What is the comparative expense of furnishing the protection that you have explained?

A. About one cent per foot.

The MASTER: You are referring now to service pipe?

Ans. Yes sir.

46. State what changes or improvements have been made in the coal gas industry, so far as pertains to construction and operation, within the past 25 or 30 years?

A. Well, principally in the form of retort construction, that is the greatest of all changes, by the addition of what is known as regenerative furnaces, insuring greater heats, more uniform temperature, and consequently a larger yield of gas from the same quantity of coal; then stepping further along, in retorts, which have made greater progress in Europe than in America, what is known as inclined retorts, but that is scarcely a factor in the United States as yet. Then in the purifying department within the last few years largely, the substitution of iron in the place of lime as a purifying material, costing very much less, and being very much more easily disposed of.

47. What has been the result of those changes so far as pertains to economical production?

Ans. To cheapen it.

48. To what extent has the introduction of the regenerative furnace diminished the cost of gas—I am not speaking of the diminution per thousand, but generally, as a general proposition?

1888 A. That is a pretty hard question to answer.

49. For what reasons then does the regenerative furnace reduce the cost?

A. By obtaining a larger production of gas per man per day, thus cheapening the labor; by obtaining a larger yield of gas from the coal, thus reducing the cost per thousand for coal. Those are the two principal reasons.

50. Measured by the quantity of gas produced which has the greater life, the regenerative furnace, or the old type furnace?

A. While the regenerative system would be shorter lived than the old setting it will produce more gas during its life time than the old setting, so in that respect, it would be the cheaper apparatus although costing more.

51. In coal gas plants of a capacity of from 550.000 to 750.000 cubic feet per day, what number of retorts per bench would be productive of the greatest economy in operation?

A. That would necessarily depend to a considerable extent on the particular requirements of the locality. For example, in a large city, where they have a large number of retorts in use, beds of 9

and 10 retorts are in use and can be most advantageously used because in lighting up a bench at a time their requirements are such as to take the make from one of those large benches, whereas, in a smaller bench perhaps the lighting up of three retorts at a time would be all they wanted, therefore the size of the bench must depend on the amount of gas required.

52. What would the fact be in a gas plant of the size mentioned in a town of about 65,000 inhabitants?

Objected to because no particular size has been mentioned.

The MASTER: Benches of 9's the witness has referred to.

Mr. IRWIN: He says 9's or 10's in large cities.

Mr. TICHENOR: My previous question referred to a gas
1889 plant of a certain size.

The MASTER: Yes sir; the witness may answer.

A. I personally would not think of putting in larger benches than 6's in a case like that for the reason that in the spring when you are dropping your benches, when you make this falling off six at a time would be the most you could afford to drop and in lighting up in the fall six would be as much as you could afford to put on at a time.

54. And for the other reasons you have given before?

Ans. Yes.

55. What hazards are there in the coal gas business now that were not in existence 20 or 25 years ago?

A. I know of none. Do I understand that relates to the manufacture?

56. I am referring to the gas business as a whole?

A. I know of none; of course, the question of competition comes in more actively now, but so far as the cost of production, or distribution or manufacture are concerned there are no greater risks I know of to-day than there were years ago. If I fail to catch the bearing of your question please excuse me.

57. That is all right. Do you know the city of Peoria, Ill.?

A. Not at all; I have never been there.

58. Do you know from the record in this case as it has been made up to this time its magnitude, the area which it covers, the general character of the soil there and topographical conditions?

A. Generally I think I do.

59. State whether or not you have examined in detail the works of complainant company as set out in this record?

A. Yes sir; a sort of specification of the works—the details. Yes, I have gone over that.

60. State whether or not you know what it would cost to construct
a plant of the magnitude of complainant's plant in the city
1890 of Peoria during the years 1899 and 1900?

A. I have made an estimate of the cost of such a plant.

61. Do you know what such cost would be?

Ans. I do.

62. Assuming that the real estate upon which the company's manufacturing plant is located cost $43.000, that it has the number of miles of mains shown by the record in this case, that it also has about 1758 meters in use, what would be the total cost of construction

A. Including the real estate on which the plant is located I estimate it at $384.192.00, as the cost.

63. That is inclusive or exclusive of the land?

A. Inclusive of the land—no, stop a moment! The construction less the land would be about $342.000, the land $43.000—perhaps my best answer to the question would be that I consider the whole capital required for such an undertaking $400.000; I think that answers the question fully.

64. What addition do you make to the figures given for the cost of construction including the land, to make up the $400.000, and why.

A. Taking the individual cost of the different parts involved I bring in the land and the works up to $225,000; the mains $125.108.73.

65. Upon what mileage of mains do you figure?

A. 26½ miles. The services $20.631.20; consumers' meters $13451.53 and allowing a working capital of $15808.54, makes a total sum of $400.000.00.

66. I will ask you to state the capacity allowed by you for the several items entering into the construction aggregating the figures you have given?

A. I have allowed for very, very much larger capacity than the plant that is already there, in some cases nearly double.

Mr. RITCHER: I move to exclude the answer inasmuch as
1891 the witness was asked to give an estimate based upon the plant described in the record.

67. What effect upon your figures would be produced by providing for the larger apparatus to which you have referred—would it cost more or less to put in the larger apparatus than it does the smaller specified in complainant's plant?

A. It would cost more for the larger plant, of course.

68. In what respects have you allowed for larger apparatus than that contained in complainant's plant?

A. Take for example the retorts; I allow for 14 benches of 6's, or 84 retorts as against seven benches of 9's and 1 enriching retort; that is, 63 working retorts and one oil retort making 64; I put in 84 retorts or an increase of 37%. According to the specifications there are in the works of complainant company two purifyers each 24 feet square, giving 1152 feet area of purifying surface; my estimate provides for six boxes 20 x 18 giving an area of 2160 feet or 87% larger; I use a larger purifying capacity because the purification is cheapened to a large degree by the enlarged area of the boxes and the slow speed with which the gas passes through the boxes.

As I understand there is there a gasholder of 300.000 feet capacity; my estimate provides for 563.000 feet capacity equal to 75% of the largest daily output.

69. What do you make the largest daily output—have you those figures before you?

Ans. Yes sir; 750.000 cubic feet.

70. To what extent would those items increase the cost over the cost of the corresponding items in complainant's plant—have you those figures?

Ans. No, I have not worked that out.

71. State whether or not the figures you have given are sufficient to complete in Peoria, Illinois, a plant with a maximum capacity of 750.000 feet per day with a milage of mains approximately 26½ miles?

1892 Objected to as incompetent, irrelevant and immaterial to the issues in this case.

The MASTER: Do you mean a plant as described in the record in this case?

Mr. TICHENOR: I am speaking of the plant the witness has estimated upon.

The MASTER: The witness may answer subject to the objection.

A. I think the figures I have given are ample to cover everything.

72. What would that plant be when completed with respect to being modern or otherwise?

(Objected to same grounds.)

A. The best modern equipment that could be obtained. I have provided in my cost for a works of a very much larger capacity than is at Peoria now, because, when I made my estimate, I did not know what the details of that plant were; I only knew there was an output of approximately 164.000.000 or a maximum of 750.000 cubic feet per day, then it was for me as a gas engineer to lay out what I thought was a works suitable for that and that is how I arrived at it.

73. Would the cost of complainant's plant, as described in this record, be greater or less than the one you have described?

A. It should be considerably less on account of the difference in capacity.

(The MASTER:)

74. By the difference in capacity you have given, do you mean to be understood that should decrease the cost of the Peoria plant in that proportion?

A. Not in that proportion but it should decrease it considerably. I can best illustrate it in this way. Take the cost of a gasholder, whereas in a small holder it may cost $150 per thousand storage and upwards in a large holder it may get down to $70 and even

$60 per thousand storage—the larger area makes a decreased cost per thousand storage.

Mr. TICHENOR: Does that answer the master's question?

1893 The MASTER: I think that makes the record show that the decrease in the cost of the Peoria plant should not be made in proportion to the increased capacity he has figured.

(Mr. TICHENOR:)

75. State whether or not you know the cost of manufacturing and distributing gas in the city of Peoria, assuming that the city along the river front extends for a distance of about four miles, that its extent back from the river is about one and a half miles, that its population is about 65,000, that the plant of complainant company is situate about in the middle of the city's length along the river; and assuming further, that the output is 164,000,000 cubic feet per annum; that gas coal delivered in the company's yards costs $2.80 per net ton; that coke is worth $3.25 per ton in that market; tar 5c. per gallon; ammonia 8c. per pound; that stokers get $65 per month, head stoker $70 per month and common labor $1.50 per day?

Objected to as not furnishing the proper elements upon which to base an answer.

The MASTER: I do not think you have included in that question all the conditions that should properly enter into the computation as shown by the record here.

Mr. TICHENOR: It appears to me I have.

The MASTER: How are you going to heat your furnaces?

Mr. TICHENOR: I think the witness understands how they are to be heated.

Mr. RITCHER: I don't care whether the question is changed; I simply want my objection noted.

The MASTER: The witness may answer subject to the objection.

A. Yes, I know what it should cost.

76. State whether or not you have gone over in detail the various elements entering into the cost of production and manufacture in Peoria under the circumstances and conditions named?

A. I have carefully.

1894 77. You may give, if you please, the details of your work together with results putting it in your own way and stating fully and at length all questions entering into such computation made by you?

Objected to as incompetent, immaterial and not based upon the facts as shown by the record as set forth in the previous hypothetical question.

The MASTER: The witness may answer subject to the objection.

A. The individual items that enter into the cost are as follows:—Coal $2.80 per ton, assuming a production of 4.90 feet per pound,

would cost 28.57 cents per thousand feet of gas made; for convenience I will state the figures taking a thousand feet of gas as a unit; taking the coal at 28.57 and deducting the residuals from that, coke, tar and ammonia, would represent 25.14, leaving the net cost of coal 3.43 per thousand cubic feet of gas; then add to that wages on the basis of 95c. per net ton of coal carbonized works out 9.69; salaries, assuming the half of the general manager's salary charged to manufacturing and half charged to distribution, which is the general rule in the gas business, would place the salaries of manufacturing at 1.52; purification 1c. per thousand, maintenance, general wear and tear—Interrupted——

78. Permit me to interrupt you. Will you please as you go along specify the figures from which those items per thousand feet are obtained?

A. By simply dividing the actual amounts involved. Take for example, say 16.734 tons of coal would be required, divide that by the quantity of gas produced and that gives the result per thousand feet and dealing with each of the items in the same way—Interrupted

79. Will you please give the figures all the way through?

A. Oh yes, the gross amounts do you mean?

80. Yes sir; and the details of your work?

1895 A. Had I better start again?

81. We want it complete—perhaps you had better start again?

A. Coal 4.90 feet per pound at $2.80 per ton requires 16734 tons, amounting to $46.857.14.

(The MASTER:)

82. Requires it for what—to produce this given quantity of gas? Ans. Yes sir;

(The SAME:)

83. What quantity do you refer to?

A. 164.000.000; that sum divided by the quantity of gas made gives 28.57 cents per t-ousand feet.

(Mr. TICHENOR:)

84. You may state what the record shows this company produced per ton of coal during the six months ending April 30, 1902, as compared with the figures you have used—4.90?

Objected to because the record speaks for itself; the witness don't have to state what the record contains.

The MASTER: I do not think it competent to have the witness state from the record.

Mr. TICHENOR: Proceed, Mr. Littlehale?

The WITNESS: The unit of comparison in the gas business is per

thousand feet of gas made. Now, from that amount just given we deduct for residuals—Interrupted—

The MASTER: What amount just given?

The WITNESS: The coal per thousand cubic feet—the amount; it works out per thousand cubic feet for coal 28.57 cents; now, we deduct from that the residuals, assuming a sale of 1050 pounds of coke per net ton of coal carbonized at $3.25 per net ton of coke, would give a gross sum of $28.552.33; assuming the sale of 11 gallons of tar, which would amount on that tonnage of coal to 184.074 gallons, at 5c. per gallon $9.203.70; assuming a production of 2.6 pounds of ammonia NH3 per ton, that equals 43.508 pounds of ammonia at 8c. per pound of NH3, amounting to $3480.64; those three items, coke, tar and ammonia amounts to $41.236.67, or
1896 25.14 cents per thousand cubic feet, which deducted from the 28.57 cents cost of coal leaves the net cost of coal per thousand feet of gas made at 3.43 cents—Interrupted—

The MASTER: For what?

The WITNESS: Per thousand cubic feet of gas; I am speaking of that as a unit all through. Then manufacturing labor, I assume for that 95c. per ton of coal, or a gross sum of $15.897.30, equal to 9.69 cents per thousand feet; salaries, assuming the half of the general manager's salary charg-able to manufacturing—$2500, or 1.52 cents per thousand cubic feet; purification $1640, or equal to 1c. per thousand cubic feet; general wear and tear, or maintenance of works $9840, equal to 6c. per thousand cubic feet; insurance $300; taxes $5500—total $5800, or equal to 3.53 cents per thousand cubic feet; advertising, stationary etc., $1230 or 75/100 per thousand cubic feet; sundries and general charges $5740 equal to 3.50 cents per thousand cubic feet, or a total amount of expenditures for the gas into the holder $48.267.77, equal to 29.42 cents per thousand cubic feet. That is the cost in the holder per thousand cubic feet made. Now, when the quantity of gas sold is used as a devisor it makes the cost per thousand cubic feet 30.34 cents per thousand.

85. What is the reason for that difference? and how is it obtained?

A. For example. Until the gas gets into the holder you have to take the gas made as the devisor, after it passes the holder you have to use the gas sold as the devisor, consequently, as the gas sold is smaller than the gas made, your devisor being less your cost is more, so it gives you for your gas made 29.42, but when you divide it by the gas sold it amounts to 30.34 cents—slightly increased.

86. What amount do you allow for unaccounted for gas between your holder and the place of consumption?

A. I have taken that as 450 cubic feet per mile of main per
1897 24 hours; there are two ways of figuring the unaccounted for gas, one as a percentage on the make, the other on the milage of mains; it is generally conceded that the milage of mains is the more correct method of measurement, that the percentage will

vary so much as often to be misleading. For example, if one main's milage is double the other with the same percentage it would be double the actual leakage, so that in quoting the leakage I took it as 450 feet per mile of main per 24 hours applying it to 26½ miles of mains; that is the basis on which that estimate is made.

87. Proceed?

A. We stopped at 30.34 cents. Now, our distribution charges; wages $9052.80, equals 5.61 cents per thousand feet; salaries $7544 equals 4.72 cents per thousand cubic feet.

88. I will ask you to state at that point whether or not you include in the item of salaries under distribution any part of the general manager's salary?

A. Yes sir; one half of it $2500; I assume the salary of the general manager to be $5000.

89. Proceed?

A. Wear and tear on the outside mains and services. General maintenance $3017.60 or 1.89 cents per thousand cubic feet; advertising, stationary etc., $1131.60 equal to 71/100 cents per thousand cubic feet; meter repairs $4526.40 equals 2.83 cents per thousand cubic feet; incidentals $2640.40 equal to 1.65 cents per thousand cubic feet, or a total cost at consumers' meters for all charges $76.180.57, equal to 47.75 cents per thousand cubic feet sold.

90. State whether or not you have made an application of those figures for the purpose of ascertaining the profits and loss account in operation, assuming that the cost of complainant's plant was $434.252.35?

Ans. I have, sir;

91. Will you please state in detail the result?

A. The total outlay, as previously stated up to consumers' meters per make of 164.000.000. cubic feet, was $76.180.57 equal to 47.75 cents per thousand cubic feet sold; add 8% as interest on cost of works, assuming that cost to be $434.252.35, it amounts to $34.739.72, or 21.76 cents per thousand cubic feet. Now, after allowing 450 feet per mile for leakage on the 26½ miles of mains would leave the gas for sale 159.647.000 feet at 75c. per thousand giving a total receipt of $119.736.25 or 75c. per thousand feet; deducting those two previous amounts, the expense of making and the 8% interest, would leave a balance of $8.815.96 equal to 2 3/10% on the capital of $434.252.35; that margin is equal to 5.49% per thousand cubic feet of gas sold. 1898

92. State whether or not you have made a similar computation based upon the cost of construction at $400.000, which you have stated was ample for the works in question?

Ans. I have.

93. What are the results?

Objected to as incompetent, irrelevant and immaterial.

A. Assuming a capitalization of $400.000 and on the same basis as the previous estimate the expense up to consumers' meters would

be the same as before; the cost of gas would be the same regardless of the capital; $76.180.57 equals 47.75 cents per thousand cubic feet sold; 8% on $100.000 capital outlay would be $32.000.00, equals 20.04 cents per thousand cubic feet sold; the gas sold would be the same as before $119.736.25 at 75c. per thousand, leaving a balance of $11.555.68, equal to 7.21 cents per thousand cubic feet or equal to 2.08 % on the capital employed under those conditions.

94. That is in excess of 8 % on the capitalization?

Ans. Yes.

95. State whether or not you have made any computation on similar lines based upon a different output from that which you have described?

Ans. I have.

96. What is the basis of this computation to which you refer?

1899 A. 150.000.000 output per annum instead of 164.000.000. a in the previous estimate.

97. What are the results of that computation—give the details?

A. On a make of 150.000.000. per annum with a leakage of 450 feet per mile of mains per day as before would leave gas for sale 145.648.000 cubic feet; to manufacture that gas on the same basis as before, 4.90 feet per pound of coal at $2.80 per net ton, the cost of coal would be, $12.856.80, equals 28.57 cents per thousand feet; made; the residuals to be deducted from that amount would be, coke 1050 pounds per ton, or a total of 8035 tons of coke at $3.25 per ton equals $26.113.75; tar, on the basis of 11 gallons per ton would represent 168.360 gallons at 5c. per gallon $8418.30; ammonia, on the basis of 2.6 pounds per ton of coal equals 39.795 pounds at 8c. per pound of NH3 amounts to $3183.60, or a total for residuals of $37,715.65, or 25.14 cents per thousand feet made, which deducted from the cost of coal leaves the net cost of coal $5141.15, or 3.43 cents per thousand feet of gas made; wages at 95c. per ton of coal amounts to $14.543.55 equal to 9.69 cents per thousand feet of gas made; salaries $2500 equal to 1.66 cents per thousand feet made; purification $1500 equal to 1c. per thousand feet made; wear and tear or maintenance $9000 or 6c. per thousand feet made; insurance $300, taxes $5500, together making $5800 equal to 3.86 cents per thousand feet made; sundries and general charges $5250.00 equal to 3.50 cents per thousand feet made, or the total cost into the holder per thousand feet made $44.859.70 equal to 29.89 cents per thousand feet made. At this point changing that into the cost per thousand feet sold the amount remains the same but it makes it 30.80 cents per thousand feet sold—the 29.89 made becomes 30.80 sold.

Then comes the distribution charges. Wages $8758.88 equal to 6c. per thousand feet sold; salaries $7282.40 equal to 5c. per thousand feet sold; wear and tear or maintenance $2767.31 equal

1900 to 1.90 cents per thousand feet sold; advertising, stationary, etc., $1092.36 equals 75/100 of a cent per thousand cubic feet sold; meter repairs $1369.44, or 3c. per thousand feet sold; in-

cidentals $2330.36 or 1.60 cents per thousand feet sold, or a total outlay up to consumers' meters of $71.440.45 equals 49.05 cents per thousand feet sold. That is the cost to consumers' meters on the basis of 150.000.000 feet made.

98. Proceed to make the application exactly as you did before if you have the figures?

A. The profit and loss showing on such a basis would be; expenses up to consumers' meters as previously given $71.440.45 equal 49.05 cents per thousand feet sold; 8 % on $434.252.35 would be $34.739.72, or 23.85 cents per thousand cubic feet sold; the receipts for gas sold, allowing a leakage of 450 feet per mile per day—the sales would represent 145.648.000 feet at 75c. per thousand $109.236.00. The two former items, expenses and 8 % dividend, deducted from that, leaves a margin of $3055.83, or 2.10 cents per thousand cubic feet, or 8 / 10 of 1 % on a capital of $434.252.35.

99. State whether or not in this deduction, to which you have just referred, you have made the same allowance for salaries, that is, salaries at the same rate as in your former deduction?

A. Absolutely the same all through; the only difference being the quantity of the output.

100. State whether or not you have made the application of those figures on the basis of an output of 150.000.000. to a capitalization of $400.000. in the place of the figures you have named?

A. With a capital of $400.000.00—which according to my first estimate I believe is ample for an output of 164.000.000.—the expenses up to consumers' meters, as previously given, would be $71.440.45 or 49.05 cents per thousand feet sold; 8 % on $400.000.00 would be $32.000.00 equal to 21.97 cents per thousand feet sold.

1901 Those two items deducted from the receipts for gas, which would be 145.648.000 feet at 75c. per thousand feet, would be $109.236.00 or 75c. per thousand feet, leaves a balance of $5795.55, equal to 3.98 cents per thousand cubic feet. The balance agreeing with the receipts.

101. You may state whether or not the figures you have given as showing the cost of production and distribution are fair, reasonable and the necessary sums to be expended for the purpose indicated.

A. I think so; I think everything is fairly covered.

102. You may state whether or not those figures cover everything in the shape of labor and material necessary to the production and distribution of the volume of gas testified about?

A. Yes sir.

103. State whether or not those figures, which you have given, are based upon manufacturing and distributing under normal conditions; that is to say, where no unusual conditions exist increasing or decreasing the cost of production or distribution?

A. I was assuming a make of 164.000.000. and 150.000.000. respectively. Now, as the consumption increases, the cost of production would diminish.

104. (Interrogatory # 103 repeated to witness.)

A. Yes sir; that is so.

105. Have you or have you not, in those figures provided for distribution in the usual manner of the whole of the make, that is, the 164.000.000. in one case and the 150.000.000. in the other?

A. Yes sir; except on the milage of mains.

106. State whether or not the 450 cubic feet per mile of mains which you have allowed for unaccounted for gas, is above or below the average for that item?

A. I think it is a fair item that ought to be attained and is attained in a great many well managed gas works and should
1902 be there maintained without any difficulty, especially in a new outfit. In a new outfit, of course, there should be less leakage than in an old one.

107. What is included under the term which you designate as leakage?

A. The better term would be, "Unaccounted for gas." Part of that arises from the gas being measured at a higher temperature on the works than it is measured at the consumers' meters; part from the condensation that takes place in the gas traveling through the mains; part from the consumers' meters, a percentage of them being slow or not registering the gas at all; part from the 10.000 joints in the street mains and services, sand holes possibly in the castings, defective welding in the service pipes and a great many causes of that sort which involve an amount of leakage that is more aptly described by the term, gas unaccounted for rather than leakage.

(The MASTER:)

108. As I understand you then this unaccounted for gas arises between the holder and the point of consumption?

A. Yes sir;—no, not all because the works station meter is prior to going into the holder and if that station meter happens to be in a warm location, or the gas has a short distance to travel along before it registers, that under some conditions, and in the summer time, the temperature may be so high the register will be a little higher, the gas will be a little more expanded than when it goes out into the mains in the streets, although in the larger works that is allowed for.

(Mr. TICHENOR:)

109. State whether or not among gas engineers there is an item of depreciation separate from the item of maintenance which is taken into account and, if so, in what manner?

A. Most gas companies in that respect are governed by the financial position in which they find themselves; every well managed gas company tries to get as liberal allowances for depreciation as they can, but there is another factor that must be
1903 brought into consideration. In most places especially in growing places, the depreciation from a growing business is more than a setoff to the depreciation of the works; that is a thing, which to

the credit side is often lost sight of; the appreciation in a growing locality is so great that it more than offsets the depreciation in the works.

110. Please explain in detail how the increase in production and consumption offsets the profit and loss account?

Objected to as incompetent, immaterial and irrelevant.

A. In this way. There are certain fixed charges that will be practically the same regardless of the output within certain limits. For example, a foreman of a small works must be a competent man, capable of handling the business, and if that company manufactures only 100,000 cubic feet per day that foreman will get pretty nearly as much money as he would get in a works making five times that amount of gas, consequently if you divide the foreman's wages by the thousand feet of gas made it is ten times as much in a smaller works as in a large works; the engine driver can just as well drive an engine passing 500,000 cubic feet of gas an hour, as he can an engine with four horse power passing 15 feet an hour, consequently the cost of production is enormously decreased by the increase in the output.

111. How would it be with reference to the general manager's salary?

A. The same way; all the fixed charges will be affected in a similar way.

112. In the case you have stated did you mean ten times greater or five times greater?

A. I said in the one case if it were one hundred thousand as compared with ten, of course, it would be ten times greater; the same with taxes.

1904 113. I understood you to make it one in five. Do you know the rate of increase in population in the city of Peoria as shown by the record in this case during the past 20 or 30 years?

A. Yes, so far as the record is concerned, I do.

114. State whether or not that increase in population is sufficient in your judgment to increase the cost of gas production and consumption sufficiently to take care of the item of depreciation to which you have referred?

Objected to as incompetent, irrelevant and immaterial and not applicable to the record in this case.

The MASTER: The witness may answer subject to the objection.

A. I believe it would judging from the comparatively rapid increase in population there would be a greater increase in the output of gas because it is a wellknown fact, established beyond any question, that the consumption *per capita* is larger as a place grows larger. For example, in a small town the consumption *per capita* of population may be perhaps a few feet or less per annum; the county town, or State capital, or large place may run up perhaps to 3000 or 4000 feet *per capita* of population per annum. Taking the

population of a place, if a gas man wants to find out what the consumption is, he asks what is the population of your place, and he will take the entire population and figure it, with such a population the annual consumption should be about so much, if he is familiar with the records of gas companies; that consumption will vary from less than one thousand *per capita* up to probably 7000 *per capita*, the reason being in the smaller place there is very little business done after six o'clock and in larger places later hours are in vogue; some places use light for advertising purposes; you go to a metropolitan city and you find a blaze of light all night consequently the longer hours of consumption in large places involve a very much larger *per capita* consumption, varying from 1000 feet *per capita* of population up to 7000, and in some cases
1905 possibly higher. I can give you the actual consumption in a great many places if you desire it.

115. State whether or not in connection wtth your business for many years as a gas engineer you have given any attention to the prices of gas stocks and particularly with reference to the rates of dividends being earned?

Ans. I have.

116. What is the value, if you know, of gas stock earning a dividend of 8 %?

Objected to as incompetent, immaterial, irrelevant and not based on the investment in any sense, or on the record in this case.

The MASTER: I do not think it material; I do not think that line of inquiry material or in any way tending to establish the cost of the manufacture or distribution of gas in any sense of the word.

Mr. TICHENOR: I should like to have the question answered.

The MASTER: The witness may answer subject to the objection.

A. I have never known a company able to pay an 8 % dividend whose stock was not at a considerable premium and sometimes at a pretty high premium. I know of companies paying a 10 % dividend whose shares have been for years past never quoted at less than $110 or $112, that is to say, $100 worth of shares would average $212.

Complainant objects to the answer for the same reasons the question was objected to and moves the court to exclude it.

117. State whether or not that ratio obtains substantially where the dividends are greater or less?

Objected to same grounds as before.

A. Well, the price of the shares are necessarily governed by the current value of money; if money is low the shares that are paying good dividends will necessarily average a higher price; they adjust themselves constantly and entirely in accordance with the money market the same as any other commodity.

1906 118. State whether or not it is practicable in a territory the size of Peoria to furnish coal gas at a nearly uniform candle power of 18 at consumers' meters?

Objected to as incompetent, immaterial and irrelevant.

A. I should say it was no difficulty whatever.

119. What change, if any, in candle power in the distance in question in this case, would there be from the holder to the point of consumption?

A. That would be governed by two things; First, the season of the year and consequently temperature; second, by the size of the mains. In summer time there would be very much less condensation than in the winter time. On the other hand, if the mains are large so the gas can pass through without undue friction there would be less deposit. Those are the two principal causes where the diminution of illuminating power comes between the holder and consumers' meters.

120. What, in your judgment, would be the maximum variation in the territory mentioned under extreme conditions of cold weather?

A. Well, I should not expect to find more than ¾ of a candle to one candle between the works and the extreme point of delivery.

121. What would be the expense of raising 18 candle power gas to 19?

Ans. About one to one and a half cents per thousand cubic feet; it can be done for less than that, but that would be a safe estimate and I might as well explain here that there are two methods of doing that; by enriching water gas it can be done very well for 1½ cents, if it were done with benzole, enriched by vaporing the gas with benzole vaporing as it leaves the works it could be done for perhaps a little less than one cent per thousand feet.

122. What, if you know, is the difference in illuminating power between coal and water gas of any given candle power?

1907 A. I do not understand that question, sir;

123. I will put the question in another way. What candle power of water gas is necessary to produce the same illumination as 18 candle power coal gas?

A. Well, 18 candle power gas is 18 candle power gas whether it is coal gas, water gas, oil gas, natural gas or anything else. 16 or 18 candle power gas is of that intensity regardless of its surroundings of production; 24 inches is 24 inches whether measured by a 24 inch rule or a two foot rule.

124. To what extent, if at all, does electrolysis imperil a gas plant, or operate as a hazard to the industry?

A. So far as my personal experience is concerned I think it has been greatly exaggerated; I have never come across a single case of injury in my own personal observation; I have seen some cases that others have met, but I have never come across a case yet I could attribute to electrolysis.

Objected to as incompetent, immaterial and irrelevant.

The MASTER: I do not see the materiality of it now, but it may become material; the witness may answer subject to the objection.

A. Varying from $3.20 to $3.50 per net ton, depending upon the location of the place; take such places as New Haven, Boston, Providence and Bridgeport—any of those places on the seaboard and about $3.19 to $3.20 would be a fair price; if you go inland it costs a little more than that because there would be the railroad freight added to the cost at the seaboard.

Cross-interrogatories by Mr. RITCHER:

1. You testified this morning with regard to the hazards of the gas business with reference to the changes which may have occurred during the last 25 years. Do you consider natural gas, where it occurs in quantities sufficient for supplying a city, a hazard of the gas business?

Ans. To some extent.

2. Where it occurs in quantities sufficient to supply the district or city where it is found, is it not a serious menace to the coal gas business?

Ans. Yes, under such conditions, of course.

3. How about the competition of electric light with coal gas as an illuminant, compared now as compared with 25 years ago?

A. I think it has been to increase gas.

4. Is it a hazard of the gas business in your judgment?

A. No.

5. Referring to electrolysis as a hazard of the gas business, do I understand you to say that a service pipe would not be attacked by electrolysis unless there was a wire from the tracks down to the service pipe?

A. You misunderstood me if you drew that inference.

1910 6. What did you mean by "the wire taking the current"?

A. I used that as an illustration as to how the current might get astray from the rails to the gas pipe and so-called electrolytic action result.

7. Is electrolytic action caused in no other way?

A. Only by the current; I know of no other way.

8. Does not the current pass without the medium of a wire or other metal-ic conductor from there the current exists to the pipes of a gas company?

A. Certainly not unless they are sufficiently near for the resistance to be insufficient to prevent the escape.

9. That would be true if there was a wire there—the current would take the line of least resistance?

A. Certainly, that was why I used the wire as an illustration.

10. I understand in your personal experience you have never observed any electrolytic action?

Ans. That is true.

Complainant objects to the answer so far as it relates to the personal experience of the witness and moves the court to exclude it.

The MASTER: No, I think that answer may stand; it is responsive to the question; as to what weight it is entitle- to will be determined hereafter.

125. Speaking from your knowledge of the subject as a gas engineer and outside of your own personal experience, what importance should be attributed to the question of electrolysis so far as pertains to its injurious or possibly injurious effects on gas plants?

A. I don't think it an important matter at all.

126. In a former answer you referred to cases presented to you by other gas engineers showing the results of electrolytic action Do you know of your own knowledge, from investigation or otherwise, that the results which you saw were actually from electrolysis?

1908 A. I had no means of knowing, but I had no reason for doubting.

127. What are your reasons for saying that in your judgment the question of electrolysis is of minor importance considered as a hazard to the gas industries?

A. First, because the leakage is a loss to the electric companies and they seek to curtail that loss at every point; it is a financial disadvantage to them and they do all in their power to return the current by efficient bonding and otherwise to save that loss; secondly, where the gas companies have discovered it even in very small degree they have charged it to the electric railways and electric light people and in some cases, I believe, have recovered damages, and therefor-, there are great efforts on both sides to restrict it to the smallest degree.

128. Where in the distributing system or in the piping is any such damage possible, and what are the conditions which make it so?

A. There are two points where damage comes from electrolysis; first, to the service pipes crossing from the main under the railway tracks, in some cases, where the ground has been made up; perhaps there may be a length of iron wire, perhaps a discarded telegraph wire, or something, which may have been dumped in a trench which forms a connection from the rails or close to the rails down to that service pipe; second; where the mains join; the pipes come end to end and sometimes there is a short distance where they don't touch and lead is interposed, and as the current is passing along from one pipe to the other the difference in the resistance sometimes causes electrolytic action that operates upon the lead and causes a leak around the joint. Those are the two main sources according to my experience and investigation as developed, as to loss from electrolytic action.

129. Do you know the cost of gas coal delivered in the yards in the different towns in the State of Massachusetts?

1909 A. I know the cost in some of them.

130. What is it?

11. Then your statement as to the circumstances under which it would occur is from hearsay?

A. No it is not; it is common sense.

12. Purely theoretical is it not?

Ans. No it is not.

13. Have you ever observed any electrolytic action in your personal experience?

Ans. No.

14. I think you testified the average life of a gas plant was from 20 to 25 years, did you not?

Ans. I did.

15. In the case you mentioned where you rebuilt a plant, was that due to the fact the plant had become destroyed through use?

A. No, renewed chiefly through growing capacity?

16. It is a fact, is it not, that one of the causes for rebuilding and reconstructing plants which occurs more frequently than any other, is the change in conditions requiring a reconstruction of the plant?

Ans. Yes sir;

1911 17. And that frequently occures long before the plant would otherwise have been worn out, does it not?

A. If a man knows his business he expects that and provides for it at the start.

18. In your judgment the foresight of a gas man should be as good as his hind sight?

A. No, I would not put it that way, but I say he ought to have foresight.

19. And in your testimony in this case you have proceeded on that assumption?

Ans. I have.

20. In addition to the ordinary wear of a gas plant and distributing system, it is a fact, is it not, that there are often local conditions which tend to depreciate the main system. For instance, such as the construction of sewers by the city or the laying of other pipes by companies not connected with your own, which disturbs the soil in the vicinity of your pipes?

A. Yes, but that belongs to all places; it is not exceptional to any one locality; it is universal.

21. That is one thing that might cause depreciation which foresight could not always provide against, is it not?

A. No, but that is universal; every gas man knows he has to face it.

22. The changing of grades by a city has the same effect, does it not?

Ans. Yes sir;

23. What care is necessary in handling the retort house of a gas company so as to avoid the burning out of the retorts by the heat coming off or other like accident?

A. Your question is a little indefinite for me to answer; I would like to have you make it clearer.

24. What would happen if the heat of the retorts was permitted to go down very suddenly and very appreciably?

1912 A. I guess the foreman of the retort house would get Hail Columbia.

25. Would the retorts themselves suffer?

A. Yes sir; extremes of heat or cold of neccesity would injure them, consequently the object is to keep the heat uniform as nearly as possible.

26. In case of any neglect on the part of the foreman, or on the part of any other employé who has charge of the retorts, great damage might result in a night, might there not?

A. You are asking me what might occur; I cannot say what might occur.

27. (Interrogatory 26 repeated to witness?)

A. I could not say; I cannot answer.

28. In other words then, neglect on the part of any of the employés of a gas company would not effect the depreciation of the plant in your judgment?

A. It might may be but I could not tell you to what extent; neglect is such a broad word.

29. If the retort house force got drunk and went off and left the retort house, would it damage the plant?

A. It might; it would depend on whether other men could be had to take their places.

30. If there were not others would it not ruin it?

A. I cannot answer a hypothetical question of that sort.

31. You are here to answer hypothetical questions and you answered them for counsel for defendant, will you not answer them for me?

A. I will if I can; there might be damage; I could not say to what extent.

32. What element of risk is there in an explosion which may occur at a gas plant or in its mains?

1913 A. I regard it as very slight.

33. Explosions do occur, do they not?

A. They do occur occasionally—semi-occasionally.

34. It is a fact the seals blow off in a gas house sometimes?

A. Yes sir.

35. If the house gets filled with gas and air mixes with it it forms an explosive vapor, does it not?

A. Yes, anywhere that gas and air get mixed it is the same; it is not confined to a gas works.

36. You spoke about having six purifying boxes. Is it not a fact that the tendency during the past four years or five years has been to two boxes rather than to even four?

A. Not in my experience; not in my observation.

37. What experience have you had in the last 3 years in that connection in the construction of gas plants?

A. None in the last 3 years, but in order that I may not be mis-

understood on that, in my judgment I think the very reverse of what you state is the fact to-day; I think the tendency is in the very opposite direction from that which you state.

38. Even during the period in which you have had no experience?

A. Yes, no personal experience, but I speak of my knowledge from the records of the business.

39. You have testified in regard to the greater economy of handling benches of 6's as compared with benches of 9's, owing to the fact you could shut down a bench of 6's with greater economy than you could a bench of 9's, if occasion required?

Ans. Yes sir;

40. As a matter of fact whether it would be more economical to manage benches of 9's or 6's could only — demonstrated by a year's run, or some period of running, showing what the actual experience was?

A. I beg your pardon, it would be demonstrated by common sense reflection.

41. Suppose the requirements of a certain city required 1914 the running of one bench of 9's and you had a bench of 6's, how many benches of 6's would it require to furnish what one bench of 9's would furnish—would it not require two benches of 6's?

A. It would; but you cite an impossible case—an utterly impossible case.

42. If at the end of a year's run the record showed that there was no variation in the demand for gas, where a bench of 6's would be of better coefficiency than a bench of 9's, then there would be no advantage in a bench of 6's in that regard, would there?

A. I cannot get at the meaning of your question.

43. (Int. 42 repeated to witness.)

A. Of course, if the record showed there was no difference there would be no difference; that is all there is to that.

44. In your estimate as to the cost of building a plant in the city of Peoria having an output of 750,000 cubic feet per day what did you estimate as the cost of the mains?

A. $125.108.73 for 26½ miles.

45. What did you estimate as the cost of the manufacturing plant?

Ans. $225.000.00.

46. What did you estimate as the cost of the services?

A. $20.631.20.

47. How many services did that cover?

Ans. 1758.

48. Of what length?

Ans. An average of about 50 feet.

49. What did you estimate the cost of the meters to be?

A. $13.451 00.

50. How many meters did that cover?

Ans. 1758.

51. Did that include the cost of placing the meters?
Ans. Yes.
52. How much did you allow for placing each meter?
A. $7.65, setting up—an average of the whole lot.
53. What was the cost of the tools and implements used in the construction of the plant?
1915 A. I included that in every item; each item would cover the cost of tools in connection with that particular job.
54. What sized meters did you cover in your estimate?
A. 413-3 lights; 1217-5 lights; 93-10 lights; 12-20 lights; 14-30 lights; 6-45 lights; 1-60 light; 1-100 light and 1-150 light.
55. What did you figure the cost of the 5 light meters at?
A. $6.34, setting up $1.50, or $7.59 set up.
56. What did you allow in your estimate of the cost of erecting the plant and mains for the salaries of officers, accounting expenses etc., during the period the plant was being erected?
A. Every item here includes all charges belonging to it.
57. Well, take each item and tell me what you allowed for such services then.
A. I included that in salaries; if the company had an engineer that engineer should be able to design all the work.
58. What did you allow for salaries in the cost of erecting that plant?
A. I have put about 5 % on the cost of the work.
59. Did you do that in your computation?
Ans. I did.
60. What was the cost of the main system before you had added that 5 %?
A. It would be 5 % less; I can work that out for you if you wish it.
61. Did you estimate the cost of these different items I have asked you about and then add 5 % to each item?
A. In making up my price I have added for supervision in each case as a separate item.
62. Have you your figures before you where you added that 5 %?
A. No sir; but it is part and parcel of the estimate of the mains.
1916 63. Then you did not add it, it was part and parcel of your estimate in the first place?
A. Yes sir; when I made up my estimate of the cost of mains I took first, my trench, then the pipe, the lead for joints, the labor in joints and everything else, then supervision and also contingencies, and the total formed my cost per foot laid.
64. Where did you calculate to buy this main pipe for this ideal plant you built in Peoria?
A. I would buy the pipe at the nearest point of manufacture.
65. Where would that be?
Ans. I presume probably in Chicago.
66. What was the price of 16 inch pipe f. o. b. Chicago, in 1899?

Ans. I suppose about $26 per ton.

67. What was the freight rate you figured on from Chicago to Peoria?

A. I did not figure it in that way; I only figured on what would be the cost of mains laid; we have to get our mains here at different distances the same as they do there.

68. Did you make any allowance for freight to the point where those mains were delivered?

A. I assumed $26 per ton at Peoria.

69. Are the prices of mains the same all over the United States irrespective of freight rates?

A. No sir; I bought them at $19 in 1897, here in this city—hundreds of tons of it.

70. Did you in 1899?

Ans. No sir.

71. Confine yourself to answering my questions and it will not be necessary to get back where iron was cheap. What did you allow for interest on the sum invested in that plant during the process of construction?

Ans. Nothing.

72. What did you allow for insurance during that period?

A. Insurance of what?

1917 73. Anything connected with the construction of the plant you are talking about?

Ans. I would not consider any insurance necessary.

74. What did you allow for rental of office or other headquarters during that period?

A. I allowed nothing for I did not take that into consideration.

75. What did you allow for legal expenses, organizing the company and attending to local contracts etc., during the construction of the work?

Ans. Nothing.

76. What did you allow for gas coal during that period for testing the plant and firing up and getting ready to deliver gas?

A. Nothing.

77. What did you allow for generator fuel during that period?

A. For what?

78. For starting up your plant and getting ready to run?

A. You have asked me that question before.

79. I beg your pardon. What did you allow for boiler fuel?

A. There is no boiler fuel until you begin running.

80. Don't you have to fire your plant up to get ready for running before you commence to deliver gas to consumers?

A. I don't know what you would want steam for.

81. What did you allow for fuel under the retorts?

Ans. Nothing.

82. What did you allow for gas coal in the retorts?

A. Nothing.

83. What did you allow for manufacturing labor and supplies during that same period?

Ans. There are none.

84. Don't you have to heat up your benches before you begin to deliver gas?

A. You asked me for manufacturing supplies before you were manufacturing—there are none.

85. Don't you have to make gas before you can sell it and
1918 test your works?

Ans. Yes, of course, you do.

86. What did you allow for the cost of the service pipes themselves—the material?

A. I took an average of 1½ inch pipe—assumed that as an average; the 1½ inch pipe I put at 5½c. a foot.

87. What did you allow for labor in laying those pipe?

A. I think it was 14 cents for trench and labor and everything complete, making the cost of the services about 19 cents per foot laid.

88. Where did you expect to purchase those service pipes in the spring of 1899?

A. Of the makers; either the National Tube Company or the Riverside Steel Company.

89. Where is the Riverside Steel Co., located?

A. At Wheeling, W. V.

90. Do you know what the freight is from Wheeling to Peoria?

A. No sir.

91. Did you take that into consideration in fixing the price of the service pipe?

Ans. No, I did not.

92. What were the size of the mains in the plant you said could be erected for $400,000?

A. 1758 feet of 16 inch; 20.768 feet of 12 inch; 3482 feet of 10 inch; 20.224 feet of 8 inch; 12.874 feet of 6 inch; 80.852 feet of 4 inch.

93. What price did you allow for your pipe—the different sizes?

Ans. All based on $26 per ton.

94. What did you allow for the labor of laying those mains?

A. Labor consists of two things, joining and trenching; the joints I allowed 5c. per foot and trench 22c. per foot on the 16 inch main. You see there is one joint every 12 feet.

95. Go on with the other sizes?

1919 A. 12 inch, jointing 4½c. per foot, trench 20c. per foot; 10 inch, jointing 2½c. per foot, trench 20c. per foot—the trench varies a very little according to the size of the main—8 inch, jointing 2.4 cents per foot, trench 17 cents per foot; 6 inch, jointing 1.8 cents per foot, trench 14 cents per foot; 4 inch, jointing 2c. per foot, trench 12c. per foot.

96. What do you mean by trench?

A. The digging, cutting and filling in the trench again.

97. Does that cover replacing pavement?

Ans. No sir;

98. Have you made any allowance for replacing pavements?

A. Yes sir; an average of $2 per square yard. for all surface uncovered.

99. How much surface did you estimate as being uncovered?

A. 39.945 feet—that pertains to the mains only understand, not services.

100. What did you allow for the services?

Ans. 6090 feet.

101. How much coke is produced per ton of coal carbonized under the figures you have testified about in your direct examination?

A. About 1250 to 1300 pounds.

102. How much of that coke would be used as fuel in the estimate you gave in your direct examination in producing gas?

A. From 20 to 25 %. In other words, I have allowed 1050 pounds for sale from every ton of coal produced.

103. As a matter -f fact if you take your highest figure of 1300 pounds carbonized and deduct 25 % it would leave 975 pounds?

A. Yes sir; if you take the two extremes.

104. I gave you the benefit of the highest figure, if you take the other figures you make it 925 pounds?

Ans. Yes sir;

105. Of the portion left, whether 925 pounds or 975 pounds, as you prefer, is it not a fact that there is about 100 pounds of that which is so fine you cannot get $3.25 per ton for it?

1920 A. No. As a matter of fact even more than 1050 lbs. is sold.

106. Is all the coke produced of a uniform grade?

Ans. No.

107. Is there any fine stuff in it that is not salable?

A. Yes.

108. The figures you speak of as more than 1050 lbs. sold—is that per net ton?

Ans. Per net ton.

109. How much breeze would you get out of that 1250 or 1300 lbs. of coal?

A. That would depend on a lot of conditions; the quality of the coal and the temperature at which it is carbonized.

110. How would it vary?

A. Probably 10%—no, not 10%—5% possibly.

111. What does breeze bring in the market when coke brings $3.25?

Ans. That depends upon local conditions; some gas works use the breeze for their own boilers in which case it is equal to the value of coke.

112. How much coke would be used for heating benches per ton of coal carbonized?

A. That depends upon the size of the benches.

113. In benches of 9's?

A. It would take from 20 to 25% of all the coke pr ·ced.

114. How much would be used for boiler fuel?

A. In a majority of cases the breeze that cannot be sold is used for boiler fuel.

115. If the breeze you speak of amounts to 5% of the 1250 or 1300 pounds, would that be sufficient for boiler fuel?

Objected to because the witness has not testified to anything of that kind; he simply said there was a variation in the quantity of breeze produced.

The MASTER: The witness fixed the average breeze produced at 5%. Now, the question is whether or not that 5% would be
1921 sufficient for the boiler fuel?

A. I think it would be a great deal more than sufficient and in addition they would have some for sale if they had a market for it.

116. Referring to the works where you say there had been more than 1050 pounds of first class coke for sale per net ton of coal carbonized—are those works small or large works?

A. Large works; when I say large works probably of 150,000,000. to 200,000,000, or thereabouts; I don't mean small works because in small works the percentage of fuel is very much larger.

117. In these 6 retort benches you speak of as the kind you would construct, what sort of retorts would you have—describe the nature of the retort itself?

A. Fire clay retorts of course.

118. About how large?

Ans. That would be a matter of choice.

119. You have stated that a certain plant you had in mind would cost so much money—I want to know what sort of retorts you were speaking of?

Ans. I should put in 21 x 15.

120. Would they be horizontal or inclined?

A. Horizontal. We speak of a retort by its height and width the length is almost uniformly the same, but there is a difference as to the area, the size and width of a retort.

121. In your estimate of the cost of putting gas into the holder at Peoria, you took gas coal at $2.80 per ton?

Ans. Yes sir.

122. Was that f. o. b. or in the yards?

A. Standing in the cars alongside.

123. And you allowed, if I understood you, 95c. per ton for the labor?

Ans. I did.

124. What did that cover?

A. That covered taking the coal from the cars and all labor pertaining to it until the coke is loaded onto the vehicle that takes it to the gas works—cars or wagons, as the case may be.

1922 125. Would that cover taking the coke into the sheds and piling it up when you have no immediate market for it?

Ans. Certainly.

126. What is covered among gas engineers by the expression, "labor of carbonizing"? Does that cover unloading from the cars?

A. Certainly; you cannot carbonize it unless you get it off the cars.

127. Nor you could not carbonize it unless it were mined. Does it cover the mining of the coal?

Ans. No.

128. What would it cost per ton to unload coal from the cars and put it in the sheds?

A. That depends upon the local facilities.

129. What do you allow for that in the estimate you made?

A. I allow to lay out my work so I could have the cars by the side of the sheds; that would probably mean seven or eight cents a ton to unload.

130. If your works were so constructed, the circumstances such, you could not take the coal from the cars for immediate use, but had to pile it in the yards—you have not covered that in your estimate have you?

Ans. I have covered storing coal, certainly.

131. What do you allow for putting it into the yards and piling it?

Ans. I told you 7 or 8c. a ton would cover that.

132. Would it make no difference whether it was taken directly from the car for use from the side of your works, or first piled in the yards and then taken from the yards?

A. Certainly, there would be a second handling.

133. What would that cost over taking it from the cars?

A. In the 95c. per ton that is included; no gas works can run without doing what you have described and the 95c. per ton is sufficient to cover all those expenses.

134. I understood you to say you would construct your works so you could run the cars on the side of the works and dump
1923 the coal from the cars?

Ans. Into the storage shed.

135. And you allow 7 or 8c. a ton for that?

A. Yes, for putting it in storage.

136. How much do you allow for taking it from storage to the retort house?

A. The retort men fetch in their own coal; that goes into the retort men direct.

137. How many retort men do you allow per bench of 9's?

A. I never run benches of 9's.

138. How many retort men do you allow to benches of 6's?

A. One man to a bench of 6's.

139. What is the duty of that man?

A. To bring in his coal, charge his retort and take the coke out into the yard.

140. And also tend to the fire and quench the coke?

A. Yes sir; he quenches the coke before he takes it out of the house.

141. Yes, I know that. How many tons of coal would a bench of 6's consume in 24 hours?

Ans. About 1800 lbs. per retort; it depends on the number of charges; 300 lbs. to the charge, each retort working four hours, it would be 1800 lbs. for a retort.

142. So there would be about 10.800 pounds for 24 hours?

A. Yes sir;

144. What did you allow for superintendent of the plant under your estimate?

Ans. $2500—the half of his salary.

145. What did you allow for superintendent at the works?

A. That I have included in the 95c. wages; that is wages; that is not a salary.

146. How much did you allow for that in your wages? How much would the man get per month?

A. $2.50 per day as foreman of the works.

1924 147. How much did you allow for your stokers?

A. About $2 per day; $1.75 or $2 per day.

148. Would you have any head stoker?

A. There would be no necessity for that; sometimes the head stoker gets 25c. a day extra, but he takes the place of the engine driver and looks after the engine and there would be no engine driver in that case.

149. How many stokers have you provided for under your figures here?

Ans. That would depend on how much I was running.

150. Take your 164.000.000. estimate, or a maximum make of 750.000 per day, how many stokers would you have for that?

A. There is a difference between winter and summer; if I was making 750.000 feet per day I could figure it out and tell you what it would be; I could not tell you offhand. How many benches would you want?

151. Enough to maintain that output?

A. For 750.000, all right, about 72 retorts—12 benches; that would be 24 stokers—12 during the day and 12 at night.

(The MASTER:)

152. Do I understand you to say that is the number of stokers you figured on in arriving at the price of manufacturing gas?

A. For a maximum make; I am asked now for a maximum make of 750.000 cubic feet a day; it would take 72 retorts to do that—benches of 6's; it would require 12 during the day and 12 at night; of course in the summer time, when less gas was being made, it would be less in proportion. I have made a mistake I see. It should be 84 retorts and it will take 16 men during the day and 16 at night, assuming one man to a bed.

153. You have just testified as to the number of men it would require to man the retorts on the assumption of an output of 750,000 per day maximum output. Suppose that the average output was 750,000 per day but varied from day to day during the
1925 year, sometimes being more than 750,000, and sometimes being less than 750,000, as you have testified, would the cost of the retort labor be more or less than a uniform 750,000 output?

A. You are asking me an impossible question.

154. You are unable as a gas engineer to answer that question, are you?

Ans. As you put it certainly, because it is an impossible question.

155. Upon a like assumption would the cost per thousand cubic feet of gas produced be more or less?

A. For stokers' wages it should be proportionate to the number of retorts you have because when you drop a bed a man is no longer paid and when you light a bed you put another man on to work and it does not vary so largely from day to day.

156. (Interrogatory 155 repeated to witness.)

A. The cost per thousand would be practically the same but the amount paid would be less as the manufacture was reduced.

157. As the manufacture shifts don't you often have to keep a man to a bench when you are not manufacturing the full output of the bench?

Ans. Sometimes that occurs, yes sir;

158. But it is something it is not worth while taking into consideration is it?

A. Certainly all things are worth taking into consideration.

159. Does it amount to enough to be very material?

A. No sir; I think the year around will be covered by what I said.

160. It would not make much difference between benches of 6's and 9's in that regard, would it?

A. Except in small works you would have a greater wastage.

161. It would not amount to much though as you have just stated?

A. I think it would be considerable; you are talking of
1926 two things utterly distinct and you are mixing them up in a glorious way.

162. What allowance have you made in your estimate of the cost of gas in the holder for the care of the purifying house, or the care of the ammonia apparatus?

A. I have classsd that all in one as wear and tear of plant, or maintenance equal to 6c. per thousand cubic feet of gas made.

163. Would that cover the wages of any one who attended to those things?

Ans. Certainly.

164. The wages of a watchman at the plant?

A. No sir; that goes to wages; that has nothing to do with wear and tear.

165. Where is that in your estimate?

A. There is no such thing as a watchman in a gas works where there is a staff of men, perhaps a dozen working day and night.

166. Then you have made no allowance for that?

A. Certainly not; when you have 12 men working you don't need a watchman outside of the 12 men.

167. What allowance have you made for the wages of the men attending to the tar and ammonia?

A. That is part and parcel of the carbonizing wages.

168. Who does that?

Ans. The yard men or purifying men?

169. What do you pay the purifying men and the yard men?

A. $1.50 per day—laboring men.

170. How many of those would you have in an output of 750.000 cubic feet per day?

A. Probably one man continuously in the purifying house would be ample.

171. How many in the yards?

A. Probably two. Let me explain to make the thing clear. In changin- a purifyer, when it has to be done, the foreman collects odd men around the plants; he wants half a dozen to do that;
1927 he changes them once a week or once a fortnight and takes men from another gang and as soon as the change is made the men go back to other jobs.

172. Who attends to the engine?

A. Sometimes the leading stoker for which he gets 25c. a day extra and sometimes they have a special engine driver.

173. What would you pay that extra engine driver if you had him?

A. $1.75 or $2.00 per day.

174. Then in addition to the stokers you would consider three ordinary laborers at $1.50 per day, an engineer at $1.75 per day and a plant superintendent at $2.50 per day sufficient employés to take care of a plant putting out 750.000 cubic feet of gas per day?

A. Yes, I think that would be about right to cover it varying of course, from time to time as the increase or decrease came.

175. In a city of the size of 50.000 inhabitants and upwards what in round numbers *if* the quantity of gas sold per mile of mains?

A. That will vary depending upon the character of the locality; in a manufacturing district or closely compact district it would be larger than in a s-arcely settled district.

176. In a city like Peoria how much would be the amount of gas sold per mile of main?

A. From one and a half to one and three-fourths millions per mile per annum.

177. What would be the average amount of consumption per meter in a city like the city of Peoria?

A. About twenty thousand I should expect.

178. In figuring the cost of gas, as you have testified in your di-

rect examination, you figured that this 164.000.000 cubic feet of gas passed through 26½ miles of main, did you not?

Ans. I did.

179. And was distributed through something less than 1800 meters?

Ans. I did.

180. If, as a matter of fact, that gas was distributed through
1928 50, or 60 or 70 miles of mains, that would raise your estimate of leakage, would it not?

Ans. Certainly.

181. It would still be 450 feet per mile of main?

A. Yes sir; I was estimating on a condition, not any problematic condition.

182. Your estimate would hold good under the problematical question just asked you, would it not?

Ans. Certainly 450 ft. per mile.

183. If the meters through which that 164.000.000. of cubic feet of gas was distributed amounted to 7000 instead of something less than 1800, the item of repairs of meters would also be increased, would it not?

Ans. Yes sir; proportionately.

184. Calling your attention again to your estimate of the cost per thousand cubic feet of gas in the holder, distributing 164.000.000. cubic feet a year, and also of 150.000.000. cubic feet a year, I will ask you what would be the effect upon the cost per thousand feet, as to whether it would increase or decrease if the output was but 55.000.000. cubic feet per year?

Objected to as incompetent, immaterial and not cross-examination.

A. Of course, the cost per thousand would be increased.

185. About how much would it be increased?

A. I could not tell you without making a calculation and it would take me some time to do it.

186. Would that increase of cost be true both in the manufacture and distribution?

A. It would be as to the manufacture, but as to the distribution practically only as to leakage, or very little; there would perhaps be an increase in distribution.

187. It would require more expense in the accounting department, would it not, presumably to take care of an out of 164.000.000. and collect the bills, keep the books etc., than it would to take care of an output of 55.000.000. under the same general conditions
1929 as prevail in Peoria?

A. Certainly if the number of consumers increased a greater number of bills would have to be made out and the expense would consequently be increased.

188. In case the output of a plant, such as you have described in

the city of Peoria, was but fifty or sixty million cubic feet per annum, would a 300.000 cubic foot holder be a proper size?

A. No, I should think there would be an excess of capacity there, or unnecessary capacity.

189. In that case you would not build a holder of 563.000. cubic feet capacity?

A. Certainly, my estimate was given for a 750.000 cubic foot maximum daily capacity.

190. And this plant you have estimated could be built for $400.000 is the plant upon which you have based your estimate of cost, is it?

Ans. Yes, certainly.

191. And that was with a milage of 26½ miles, was it not?

A. Yes sir;

Re-direct interrogatories by Mr. TICHENOR:

1. Under what conditions was your estimate with reference to the cost of distribution based?

Objected to as amply covered in the direct examination and not proper redirect.

The MASTER: I do not know that I understand the purport of your question, Mr. Tichenor, but perhaps the witness does and he may answer subject to the objection.

A. On 26½ miles of mains as the conditions exist.

The MASTER: You have been all over that if that was what you were seeking to draw out.

2. To what extent, if at all, did you take into account the question of the cost of piping and freight rates in making up your
1930 estimate of the aggregate cost of the plant to which you have referred?

(Objected to as not proper redirect.)

A. In my estimate for the cost of mains everything was taken into consideration. For example, assuming the cost of pipe laid down on the place at $26 a ton—of course, freight and everything is included in that although I have not made a separate item of freight but it is assumed I got the mains at $26 per ton laid down at Peoria, the freight is taken into consideration but not as a separate item; usually gas companies buy their pipe delivered on board the cars in their own town.

3. Suppose the capacity of complainant's manufacturing plant is 650.000 cubic feet per day, what would be the proper sized holder to handle that capacity?

Objected to as not proper re-direct.

A. I should reckon to have at least 75% of the maximum capacity in storage and if I could get more so much the better; so,

taking ⅓ of whatever quantity you select as your maximum capacity—I should want at least that; if I had 24 hours' maximum capacity so much the better, but I would want at least 75%; with a water gas plant you could do with less, but we are talking about coal gas plants.

4. In one of your computations you made 150,000,000 cubic feet per annum the basis—why did you do that? Where did you get the 150,0000,000 which you made the basis of that computation?

Mr. RITCHER: We object to the question as immaterial; counsel for defendant asked the witness that question himself and I don't see why he wants to make this witness a mind reader and find out why he was asked that.

The MASTER: I think I would like to know myself why he did that, or what was the necessity of doing it; he may answer the question subject to the objection.

1931 A. That was a hypothetical case to see what the difference would be as compared with the 164,000,000. cubic feet per annum.

(The MASTER:)

5. Why didn't you take 130,000,000. instead of 150,000,000.?

A. I might have taken any quantity but I simply took 150,000,000.; I might have taken any other quantity; it was simply to see what the difference was in the cost and the working results on a smaller sized operation.

(Mr. TICHENOR:)

6. Do you know what the output of the two Peoria companies was last year?

Objected to as incompetent, immaterial, having nothing to do with the issue here and not proper re-direct.

The MASTER: I do not think it proper re-direct.

Mr. TICHENOR: I don't think it is either; I ask it as an original question.

The MASTER: The witness may answer subject to the objection.

A. I do not.

7. Do you know what Brown's Directory states as the output of the Peoria companies for last year as appears in the issue of 1902?

Objected to same grounds and also as not the best evidence.

A. So far as my memory serves me the directory states it was 150,000,000 for the new company and 70,000,000, I think, for the old. Brown's Directory is here and I can refer to it.

8. I wish you would refer to the directory?

A. Come to think of it I believe that was the reason I took 150,000,000, because Brown's Directory gave it at that. (Witness referring to Brown's Directory.) The Peoria Gas-Light & Coke Co., is

given here at 100,000,000 and the other at 50,000,000, the two together making 150,000,000. That is it—150,000,000 was the consumption of the town and that was what I had in mind.

1932 9. You may state whether or not as the production varies from time to time the cost for retort labor per thousand cubic feet remains substantially constant?

Objected to as not proper re-direct being fully covered on direct examination and the witness was cross-examined on it.

A. Yes sir;

10. In answering a question propounded by counsel for complainant with reference to the size of plants which had produced more than 1050 pounds of coke per ton of coal for sale, you referred to those plants of 150,000,000 or 200,000,000 and upwards—did you mean 150,000,000 cubic feet or 200,000,000 cubic feet per annum output?

A. Certainly, the reason being so as to make the thing clear that a greater mass of retorts heated together mutually assist each other in the heating there being less percentage of cost by radiation, less fuel consumed per bench and consequently more left for sale; if you have one bench only heated you have two cold sides and two ends, if you have forty you have only two cold ends.

11. In a town the size of Peoria and covering the area it does, consuming 164,000,000 per annum, can you tell about how many meters would be in use under normal conditions?

A. I would have to divide the 164,000,000 by 20,000—that would be under normal conditions; that would be giving it in round numbers approximately.

12. Did you take that into consideration in making up your estimate of the cost of distribution?

Objected to as not proper re-direct.

A. No. I took the cost of distribution as I found the conditions; you see I have only taken the leakage at 450 feet per mile on 26½ miles; I have not taken the leakage on what does not exist before me or the interest on mains other than the 26½ miles.

Re-cross-interrogatories by Mr. RITCHER:

1933 1. In a plant having an output of 150,000,000 per year would 1050 pounds of coke be an average yield, or maximum yield?

A. I think it would be an average.

2. Suppose the sales were 50,000,000 feet of gas per year, what would the sale of coke be?

A. It would be less than that, of course.

3. About how much?

A. I could not answer that question, but I can explain that by saying there would be a larger percentage used for fuel in a small works.

(The MASTER:)

Q. I don't understand from what source you assume your figures in computing the 26½ miles of mains in Peoria you take the arbitrary price of $26 per ton for the iron pipe—why do you take $26 per ton for the iron?

A. That is the latest quotation I know of.

(The SAME:)

Q. You take the present market quotation?

A. Yes sir; I have also explained that I bought iron in 1897 as low as $19 a ton; I have taken $26 per ton as the current price.

Questions by Mr. TICHENOR:

Q. How did the cost of iron pipe in 1899 and 1900 compare with the cost at the present time, if you know?

A. I don't think it has varied more than a couple of dollars at a time; I could not answer that.

Q. Do you know whether it was higher or lower?

A. I could not tell that because for the past three years I have not bought any.

Q. My question was aimed at the prices in 1899 and 1900?

A. I think $26 per ton would amply cover it at that time.

Q. Then as I understand you there has been a heavy advance in iron pipe since 1897?

A. Certainly because in 1897 I bought it at $19 per ton.

Adjourned to meet on notice from the special commissioner.

1934 United States circuit court room, Government building.

PEORIA, ILLINOIS,
SATURDAY, *August* 30, 1902—10 o'clock a. —.

Parties met pursuant to notice by the special commissioner.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin and Mr. E. C. Ritcher appearing for complainant. Mr. Henry Mansfield, city attorney, appearing for defendant.

The MASTER: I have made a careful examination of the secretary's book, including the sealed as well as the unsealed portions of the records which were offered in evidence the other day by the defendant, under the stipulation of counsel appearing in this record, the same being objected to by counsel for complainant, and I have come to this conclusion as to the admissibility of the records.

I think the objection should be sustained to all the proceedings of the board of directors appearing on pages 6 and 7 of the record and the same excluded.

I think the proceedings appearing on pages 8 to 12 inclusive and the two first lines on page 13, are admissible and the objection will be overruled.

I think the proceedings appearing on page 21 relating to stock assignments etc., are admissible and the objection will be overruled, the balance of the record of the meeting of January 2, 1900, appearing on pages 14 to 21 inclusive, except that part I have just admitted relating to stock assignments etc. appearing on page 21, I think is inadmissible and should be excluded and the objection sustained.

The proceedings of the special stockholders' meeting appearing on pages 22 to 26 inclusive, I think should be excluded as inadmissible and the objection sustained.

The proceedings appearing on pages 27 and 28 I think are admissible and the objection will be overruled.

1935 The proceedings of the board of directors appearing on pages 29 to 40 inclusive I think are inadmissible and the objection to that portion of the record will be sustained.

The proceedings of the board appearing on pages 41 to 54 inclusive I think are admissible and the objection will be overruled.

The proceedings of the board appearing on pages 55 to 77 inclusive will be excluded and the objection sustained.

The proceedings of the board appearing on pages 78 to 80 inclusive I think are admissible and the objection will be overruled.

The proceedings on page 81 I think are inadmissible and as to such proceedings the objection will be sustained.

I have gone over this secretary's book very carefully and some of the sealed portions of the record I have admitted because I can see how it might have a bearing on some of the issues in this case. I have admitted every portion of the record that in my judgment was admissible or material under any issue in this case.

Mr. MANSFIELD: The defendant excepts to the ruling of the master in excluding any portions of the secretary's book offered in evidence.

Mr. RITCHER: I make the point that the exception is improper under the stipulation contained in this record.

Such portions of the secretary's book admitted in evidence by the master are in the words and figures following, to-wit:

1936 Called meeting of the board of directors of the Peoples Gas and Electric Company, held at the office of Harlin & Miller, 211 Main street, in the city of Peoria, Illinois, on the 8th day of May, A. D. 1899.

Present: Sumner R. Clarke, president; T. J. Miller, secretary and treasurer; B. Warren, Jr.; O. J. Bailey; Frank T. Corning; J. H. Littlewood, and P. B. Miles.

The meeting was called to order by Sumner R. Clarke, president, who announced that a quorum was present for the transacton of business.

The minutes of the last meeting of the board held at the office of Irwin & Slemmons, in the Niagara building, on the 20th day of March, 1899, were read and on motion approved.

The president then reported that the officers had proceeded to carry out the purposes for which the company was organized; had secured the petitions of property owners along a large portion of the streets, avenues and public highways in the city of Peoria to grant to the company the right to lay gas mains and distribute gas for light, heat, fuel and power purposes. * * *

That in pursuance to the prayer of said petitioners, the company had made application to the city council of the city of Peoria for licenses and franchises for such purposes.

And that in pursuance to such petitions and applications, the city council of the city of Peoria, Illinois, duly passed and adopted
1937 an ordinance entitled, "An ordinance granting the Peoples Gas and Electric Company the right to lay gas mains and poles and distribute gas in and along the several streets and highways in the city of Peoria, Illinois;" which ordinance was duly adopted by the city council of the city of Peoria, on the 18th day of April, A. D. 1899, and thereafter duly approved by John Warner, the mayor of said city. * * *

That in pursuance to the provisions of said ordinances, the president and secretary of the company had duly caused to be executed in the name of said company, proper acceptances of said ordinances and filed with the city clerk and comptroller of said city, as therein required; and also had caused to be executed in the name of the company, with good and sufficient sureties thereon, bonds payable to the city of Peoria for the amounts and conditioned as in said respective ordinances required, and also had deposited with the city treasurer of said city the sum of five thousand dollars in cash, as an evidence of good faith in the acceptance of said gas ordinance contract, on the conditions as required in said ordinance.

And the president asked that the same and all acts of the officers of the company in connection therewith be approved by the board of directors.

Mr. O. J. Bailey moved that the board of directors approve all acts of the officers of the company in securing said ordinances, franchises and licenses, and all other acts done or caused to be done by such officers necessary in compliance with the terms of said ordinances to make the same a binding contract between the City of Peoria and the Peoples Gas and Electric Company.

Said motion being duly seconded, the president announced that the question was upon the adoption of said motion and on a
1938 vote said motion received the unanimous approval of the board present. Thereupon the president announced that the motion was carried unanimously.

The secretary then read the resignation of Mr. Philo B. Miles as a director of the company, and on motion the resignation of Mr. Philo B. Miles was accepted.

The president then announced the next order of business would be the election of a member of the board to fill the vacancy caused by the resignation of Mr. Philo B. Miles.

r. F. W. Little was placed in nomination and there being no r nominations, on motion the secretary was instructed to cast unanimous ballot of the board present in favor of the election of F. W. Little as a member of the board of directors. The secre- on reporting the ballot as being so cast, the president then an- ced that Mr. F. W. Little was duly elected a member of the d of directors to fill the vacancy caused by the resignation of o B. Miles.

he secretary then read the resignation of Mr. B. Warren, Jr., as president of the company. On motion the resignation of Mr. Warren, Jr., as vice president was accepted by the unanimous of the board.

he president then announced that the next order of business was election of a vice president to fill the vacancy caused by the gnation of Mr. B. Warren, Jr., and Mr. F. W. Little being placed omination as vice president, and there being no other nomina- s, on motion the secretary was instructed to cast the unanimous ot of the board in favor of the election of Mr. F. W. Little to the e of vice president.

The secretary having reported the ballot as so cast, the presi- dent then announced that Mr. F. W. Little was duly elected to the office of vice president to fill the vacancy caused by resignation of Mr. B. Warren, Jr.

he secretary then read the resignation of Mr. O. J. Bailey as a ector of the company, and on motion the same was accepted by unanimous vote of the board.

he president then announced that the next order of business uld be the election of a member of the board of directors to fill vacancy caused by the resignation of Mr. O. J. Bailey, and Mr. man A. Walton was placed in nomination to fill such vacancy, there being no other nominations, on motion the secretary was tructed to cast the unanimous ballot of the board present in favor he election of Mr. Lyman A. Walton as a member of the board irectors.

he ballot being so cast the president thereupon announced that Lyman A. Walton was duly elected a member of the board of ectors of the company to fill the vacancy caused by the resigna- n of Mr. P. J. Bailey.

he secretary then read the resignation of Mr. Theodore J. ller, as treasurer of the company, and on motion the same was epted.

he president then announced that the next order of business uld be the election of a treasurer to fill the vacancy caused by the gnation of Mr. Theodore J. Miller, and Mr. Lyman A. Walton ng placed in nomination for such office, and there being no other minations, on motion the secretary was instructed to cast the animous ballot of the board present in favor of the election of r. Lyman A. Walton to the office of treasurer of the company.

Sumner R. Clarke	500 shares,	Present in person.
Sumner R. Clarke, trustee	50 "	Present in person.
Ferd Luthy	50 "	Present in person.
W. T. Irwin	25 "	Present in person.
F. W. Little	750 "	Present in person.
Geo. H. Littlewood	50 "	Present in person.
Theo. J. Miller	2 "	Present in person.
John R. Walsh	3040 "	Pres. by proxy to F. W. Little.
Lyman A. Walton	10 "	Present by proxy to F. W. Little.
Total	4477 shares	

It appearing that a quorum was present, the meeting proceeded to business.

It was moved by Mr. W. T. Irwin, the motion being duly seconded by Mr. F. W. Little, that Mr. Ferd Luthy be author-
1942 ized and instructed to cast the vote of all of the stockholders present and entitled to representation in said meeting in favor of the re-election of each of the following directors of the company to serve for the ensuing year and until their successors are duly elected and qualified, to-wit:

Sumner R. Clarke, Geo. H. Littlewood, Frank T. Corning, Benj. Warren, Jr., Lyman A. Walton, Theo. J. Miller, F. W. Little.

The motion having been put to a vote received the unanimous vote of all stock present in favor of its adoption, and was thereupon declared duly adopted.

Mr. Ferd Luthy reported that he had cast the vote of the stockholders present in favor of the above mentioned directors, and thereupon the president declared them and each of them duly and legally elected directors of this company to serve for the ensuing year and until their successors are duly elected and qualified.

It was duly moved and seconded that the meeting adjourn to May 15, 1900, at 3:00 o'clock p. m., and the motion being put to a vote was carried unanimously.

THEO. J. MILLER, *Secretary.*

1943 Stockholders' meeting—special.

PEORIA, ILLINOIS, *June* 14, 1900.

Minutes of Stockholders' Meeting.

Special meeting of the stockholders of the Peoria Gas and Electric Company convened at the office of said company, 420 Main street, in the city of Peoria, Illinois, on Thursday, June 14, 1900, at 3:00 o'clock p. m. in pursuance to the following notice:

The ballot being so cast, the president then announced tthat
1940 Mr. Lyman A. Walton was duly elected to the office of treasurer to fill the vacancy caused by the resignation of Mr. Theodore J. Miller.

* * * * * * *

THEO. J. MILLER, *Secretary.*

Called meeting of the board of directors of the Peoples Gas amd Electric Company.

PEORIA, ILLINOIS, *January* 2, 1900.

* * * * * * *

The secretary submitted to the meeting a statement showing tthat assignments of subscriptions to the capital stock of this company had been made as follows, to-wit:

Date.	From—	To—	No. of shares.
May 7, 1899.	Sumner R. Clarke.....	John R. Walsh.....	3040
" " "	Sumner R. Clarke.....	Lyman A. Walton.....	10
" " "	Sumner R. Clarke.....	W. T. Irwin.....	25
" " "	Sumner R. Clarke.....	F. W. Little.....	750
" " "	Sumner R. Clarke.....	S. R. Clarke, trustee.....	50
" " "	Theo. J. Miller.....	Christina A. Miller.....	148

On motion duly seconded, it was resolved that such assignments be recognized, approved and confirmed.

On motion meeting adjourned.

THEO. J. MILLER, *Secretary.*

1941 PEORIA, ILLINOIS, *Mar.* 13, 1900.

Second annual meeting of the stockholders of Peoples Gas and Electric Company.

Pursuant to notice duly mailed to each stockholder, as provided by the by-laws of the company, the regular annual meeting of the stockholders of the Peoples Gas and Electric Company was heldl at the office of said company, in the city of Peoria, Illinois, on Tuesday, March 13, A. D. 1900, at 3.00 o'clock p. m., the president, Mr. Sumner R. Clarke, in the chair.

The secretary was instructed to call the roll, and it appeared that the following stockholders were present and represented at said meeting, to-wit:

"Peoples Gas and Electric Company, 420 Main street.

PEORIA, ILL., *May* 12, 1900.

"At a meeting of the directors of the Peoples Gas and Electric Company held at the office of said company, at No. 420 Main street, Peoria, Illinois, on the 12th day of May, A. D. 1900, the following resolution was adopted:

"Whereas, in the judgment of the directors of the Peoples Gas and Electric Company, it would be expedient and to the best interests of said company to increase the capital stock of said company to one million dollars;

"Therefore, be it resolved, That a special meeting of the stockholders of the Peoples Gas and Electric Company be, and the same is hereby called to be held at the office of said company, at No. 420 Main street, Peoria, Illinois, on the 14th day of June, A. D. 1900, at 3:00 o'clock p.m. of said day, for the purpose of submitting to
1944 a vote of such stockholders the question of increasing the capital stock of said Peoples Gas and Electric Company so that the same shall be one million dollars.

"And be it further resolved, That due and legal notice be given to all the stockholders of said Peoples Gas and Electric Company of the time, place and purpose of such meeting.

Now therefore, please take notice, that there will be a meeting of the stockholders of said Peoples Gas and Electric Company at the time and place and for the purpose set forth in said resolution.

SUMNER R. CLARKE,
FRANK T. CORNING,
B. WARREN, JR.,
THEODORE J. MILLER,
F. W. LITTLE,
Directors."

The president of the company being absent, the vice president called the meeting to order and acted as chairman of the meeting, as provided by the by-laws.

The secretary was ordered to read the foregoing notice convening said meeting. The same being done, the secretary also read the following affidavit, namely:

"STATE OF ILLINOIS, }
Peoria County, } *ss.*:

Theodore J. Miller being duly sworn, on his oath states that he is secretary of the Peoria Gas and Electric Company (formerly the Peoples Gas and Electric Company) and that on the 12th day
1945 of May, A. D. 1900, he deposited in the post-office at Peoria, Illinois, in a duly stamped envelope addressed to each stockholder of said company, the following notice, to-wit:

"Peoples Gas and Electric Company, 420 Main street.

PEORIA, ILL., *May* 12, 1900.

"At a meeting of the directors of the Peoples Gas and Electric Company held at the office of said company, at No. 420 Main street, Peoria, Illinois, on the 12th day of May, A. D. 1900, the following resolution was adopted:

"Whereas, in the judgment of the directors of the Peoples Gas and Electric Company, it would be expedient and to the best interests of said company to increase the capital stock of said company to one million dollars:

"Therefore, be it resolved, That a special meeting of the stockholders of the Peoples Gas and Electric Company be, and the same is hereby called to be held at the office of said company, at No. 420 Main street, Peoria, Illinois, on the 14th day of June, A. D. 1900, at 3.00 o'clock p. m. of said day, for the purpose of submitting to a vote of such stockholders the question of increasing the capital stock of said Peoples Gas and Electric Company so that the same shall be one million dollars:

"And be it further resolved, That due and legal notice be given to all the stockholders of said Peoples Gas and Electric Company of the time, place and purpose of such meeting.

"Now therefore, please take notice, that there will be a meeting of the stockholders of said Peoples Gas and Electric Company at the time and place and for the purpose set forth in said
1946 resolution.

SUMNER R. CLARKE,
FRANK T. CORNING,
B. WARREN, JR.,
THEODORE J. MILLER,
F. W. LITTLE,
Directors.

"And also caused a general notice of the time and place and object of such meeting, signed by said directors to be published in the Peoria Herald Transcript, a public newspaper published in the city of Peoria, Illinois, once each week for three successive weeks, the same being on the following dates, to-wit: on May 17, 1900; May 24, 1900, and May 31, 1900, as required by law.

THEODORE J. MILLER, *Secretary.*

"Subscribed and sworn to before me, this 14th day of June, A. D. 1900.

LIZZIE A. PULSIPHER,
[SEAL.] *Notary Public.*"

The chairman then instructed the secretary to call the roll of the stockholders and ascertain the number of shares present and represented at said meeting.

The roll being called the following stockholders were present in person and by proxy and entitled to representation at said meeting, to-wit:

1947	F. W. Little	750	shares	Present in person
	Theo. J. Miller	2	"	Present in person
	Lyman A. Walton	10	"	Present by proxy to F. W. Little.
	B. Warren, Jr.	50	"	Present in person
	Geo. H. Littlewood	50	"	Present in person
	John R. Walsh	3040	"	Present by proxy to F. W. Little.
	W. T. Irwin	25	"	Present in person
	Total	3927	shares	

The chairman thereupon instructed the secretary to read the proxies of John R. Walsh and Lyman A. Walton, and the same being in due form and properly stamped and authenticated, the chairman stated that 3927 shares of the capital stock of said corporation were present in person or by proxy and that the same constituted a quorum for the transaction of business.

W. T. Irwin thereupon offered the following resolution and moved its adoption, to-wit—

"Resolved, That the capital stock of this corporation be increased so that the same shall be one million dollars."

Said motion having been duly seconded, the chairman stated that the question was upon the adoption of said resolution and instructed the secretary to call the roll of stock present upon its adoption.

Said roll having been called the secretary reported 3927 shares of the capital stock of this company voting in the affirmative and none in the negative. The chairman thereupon stated that more than two-thirds of the whole number of the shares of the
1948 capital stock having voted in the affirmative the resolution was declared passed and adopted.

On motion duly seconded the president and secretary were thereupon instructed to file the proper certificates of the increase of the capital stock of this company, as provided in said resolution, with the secretary of state and with the recorder of deeds in the county of Peoria, in the State of Illinois, where the principal office of said corporation is located, as provided by law.

Mr. Ben Warren, Jr. then offered the following resolution, and moved its adoption, to-wit:—

Whereas, the capital stock of this corporation has been increased by vote of the stockholders in the manner provided by law, to one million dollars; and

Whereas, this corporation is possessed of assets including its several ordinance franchises in the city of Peoria, village of North

Peoria, village of Averyville and village of South Peoria, far exceeding in value the amount of the capital stock of said corporation now issued; and

Whereas, each stockholder of said corporation is interested alike in said property according to their respective holdings of the capital stock therein; therefore

Resolved, That it is the sense of this stockholders' meeting that the assets of this corporation are equal in value to the full amount of the authorized capital stock of one million dollars ($1,000,000), and that it is recommended that the board of directors pro rate
1949 the increase of said capital stock of five hundred thousand dollars ($500,000.00), among the present stockholders in said corporation in the proportion of their respective holdings, and that said capital stock be so issued as fully paid up and non assessible."

Said motion having been duly seconded, the chairman stated that the question was upon the adoption of the resolution and instructed the secretary to call the roll of the stock present on its adoption.

Said roll being called, the secretary reported 3927 shares of the capital stock of this company voting in the affirmative and none in the negative. The chairman thereupon stated that more than two-thirds of the whole number of shares of the capital stock having voted in the affirmative the resolution was declared passed and adopted.

W. T. Irwin then offered the following resolution and moved its adoption, towit:—

Resolved, That the action of the board of directors of this company in authorizing and directing the execution and issue of two thousand coupon bonds, for the sum of one thousand dollars each, payable in gold coin of the United States of the present standard of weight and fineness, and bearing interest at the rate of five per cent. per annum, and payable on the first day of July, 1930, and the giving of a mortgage or deed of trust for the purpose of securing the payment of said bonds, and the interest thereon, conveying to the Equitable Trust Company and its successors in trust, as trustee, all the property, rights, franchises, easements, privileges and immunities
1950 of this company, of whatever name or nature, real, personal or mixed, in possession or expectancy, now owned or possessed or which may be hereafter owned, acquired or possessed by this company, together with all tolls, incomes, revenues, rents, issues and profits thereof, is hereby approved, ratified and confirmed."

Said motion having been duly seconded, the chairman stated that the question was upon the adoption of the resolution, and instructed the secretary to call the roll of the stock present on its adoption.

Said roll being called, the secretary reported 3927 shares of the capital stock of this company voting in the affirmative and none in the negative. The chairman thereupon stated that more than two-thirds of the whole number of shares of the capital stock having voted in the affirmative, the resolution was declared passed and adopted.

Geo. H. Littlewood then offered the following resolution and moved its adoption, to-wit:

"Resolved, That of the thirty year five per cent. first mortgage bonds this day authorized to be issued, no more at the par value thereof shall be issued at any time than the amount of the capital stock of this company then outstanding."

Said motion having been duly seconded, the chairman stated that the question was upon the adoption of the resolution, and instructed the secretary to call the roll of the stock present on its adoption.

Said roll being called, the secretary reported 3927 shares
1951 of the capital stock of this company voting in the affirmative and none in the negative. The chairman thereupon stated that more than two-thirds of the whole number of shares of the capital stock having voted in the affirmative the resolution was declared passed and adopted.

On motion this meeting adjourned.

THEO. J. MILLER, *Secretary.*

Directors' meeting, special.

PEORIA, ILLINOIS, *December* 26, 1900.

Pursuant to notice according to the by-laws, a special meeting of the board of directors of the Peoria Gas and Electric Company was held at the company's office, in Peoria, Illinois, on Wednesday, the 26th day of December, A. D. 1900, at 4 o'clock p. m.

The following directors were present:

Sumner R. Clarke	F. W. Little
George H. Littlewood	Theo. J. Miller
B. Warren, Jr.	

The president, Mr. Sumner R. Clarke, presided.

On motion of Mr. B. Warren, Jr., seconded by Mr. George H. Littlewood, the following resolution was adopted by unanimous vote:

"Resolved, That the capital stock of the Peoria Gas and Electric Company be increased from one million dollars to two
1952 million dollars, and that a special meeting of the stockholders of this corporation be called for the purpose of submitting to a vote of such stockholders the question of such increase of the capital stock, and that such special stockholders' meeting be held at the office of this company in Peoria, Illinois, on January 29, 1901, at 4:00 o'clock p. m.

On motion, meeting adjourned.

THEO. J. MILLER, *Secretary.*

Stockholders' meeting, special.

PEORIA, ILLINOIS, *January* 29, 1901.

A special meeting of the stockholders of the Peoria Gas and Electric Company was held on the 29th day of January, A. D. 1901, at the hour of 4 o'clock p. m. at the office of said company, in Peoria, Illinois, pursuant to notice given by depositing in the postoffice, at least thirty days before the said 29th day of January, A. D., 1901, the following notice, properly addressed to each stockholder and bearing the requisite postage stamps, and signed by a majority of the directors of this company, to wit:

"Peoria Gas and Electric Company, 420 Main street, Peoria, Illinois.

PEORIA, ILLINOIS, *December* 26, 1901.

"A special meeting of the stockholders of the Peoria Gas and Electric Company will be held, pursuant to a resolution of the board of directors of said company, at the office of the company in Peoria, Illinois, on January 29, 1901, at 4 o'clock p. m. for the purpose of voting upon the proposition to increase the capital stock of said company from one million dollars to two million dollars.

SUMNER R. CLARKE,
GEORGE H. LITTLEWOOD,
B. WARREN, JR.,
F. W. LITTLE,
THEO. J. MILLER,
Directors."

Also by publishing for three successive weeks in the Peoria Herald-Transcript, a newspaper printed and published in the county of Peoria, Illinois, being the county in which the principal office of this corporation is located, as appears from the affidavit of the secretary on file, and the certificate of publication thereof, hereto attached, the notice hereinabove set forth, stating the time, place and object of such meeting.

The secretary presented to the meeting affidavit of the mailing of said notices and certificate of publisher as to the publication of said notice, and the same were ordered filed with the records of this company.

Mr. Sumner R. Clarke presided.

The meeting was called to order by Mr. Sumner R. Clarke, president, and the secretary of the corporation assumed the duties of secretary.

The secretary was instructed to call the roll of stockholders to determine the stock represented at the meeting, and thereupon the

1954 following stockholders were found to be present either in person or by proxy, to-wit:—

Sumner R. Clarke and John R. Walsh,—jointly	4993	shares	Present by proxy to F. W. Little.
Lyman A. Walton	1	"	" "
Sumner R. Clarke	1	"	" in person
George H. Littlewood	1	"	" "
B. Warren, Jr.	1	"	" "
F. W. Little	5001	"	" "
Theodore J. Miller	1	"	" "
Total	9999	shares present,	

and it appearing there were present and represented, either in person or by proxy, 9999 shares of the capital stock of the said company, out of a total of 10,000 shares, the president thereupon declared more than two-thirds of all of the capital stock of the corporation represented and present, and that the meeting was open for the transaction of the business specified in the call.

Thereupon Mr. F. W. Little offered the following resolution and moved its adoption, towit:

"Resolved, That the capital stock of this company be, and the same is hereby increased, so that the same shall be two million dollars."

And the question being upon the adoption of said resolution, the president instructed the secretary to call the roll of the stockholders upon the question of the adoption of said resolution, and thereupon the roll having been called, the secretary announced that 9999 shares of stock voted in the affirmative for the adoption of said resolution and that no votes were cast in the negative, and the said

1955 resolution having received votes representing more than two-thirds of all the stock of the corporation, the said resolution was declared duly adopted.

On motion of Mr. B. Warren, Jr. duly seconded, the president and secretary ware instructed to file the necessary certificate and to make publication of said increase of capital stock in the manner required by the statute.

On motion, the meeting adjourned to Tuesday, the fifth day of February, 1901, at 4 o'clock, p. m.

THEO. J. MILLER, *Secretary.*

Directors' meeting—special.

PEORIA, ILLINOIS, *October* 8, 1901.

Special meeting of the board of directors of the Peoria Gas and Electric Company, held at the office of the company, in the city of Peoria, Illinois, on the 8th day of October, 1901.

Present: Messrs. S. R. Clarke, B. Warren, Jr. F. W. Little, Theodore J. Miller.

The meeting was called to order by the president, who stated that the meeting had been called to consider the communication and request of the Peoria Gas Light and Coke Company for a proposition to furnish said company a sufficient amount of gas to supply
1956 its customers in the city of Peoria, Illinois, together with the terms and conditions upon which the same could be furnished.

After the reading of the communication and request, and a general discussion as to the feasibility of furnishing gas to said Peoria Gas Light and Coke Company, and it appearing that the capacity of the plant of this company was sufficient to furnish all the gas consumed in the city of Peoria, Mr. Warren offered the following resolution:

"Resolved, That the president be, and he is hereby authorized to make a proposition to the Peoria Gas Light and Coke Company to furnish it gas in sufficient amount to supply its customers, in pursuance to the request of said company, conditioned substantially as follows:

"*First.* That this company will furnish the Peoria Gas Light and Coke Company a sufficient amount of gas to supply its customers and consumers in the city of Peoria, Illinois, at the rate of seventy-five cents per thousand cubic feet of gas so furnished.

Second. That all leakage or loss of gas between its meter in its plant in said city, and the delivery thereof to its several consumers, shall be accounted and paid for at the rate of fifty cents per thousand cubic feet of gas.

Third. That to determine the amount of gas so furnished through the meter of the gas plant of the Peoria Gas Light and Coke Company and the loss or leakage thereof in delivering the same to the several consumers, the Peoria Gas and Electric Company, its officers and employees shall at all times have access to
1957–1959 the plant of the Peoria Gas Light and Coke Company for the examination of its station meter, and shall also have the right to read and take the measure of all meters set or placed for consumers.

Fourth. That this company shall have the right to connect, by suitable means pipes and connections of its gas plant and pipes with the meter and pipes of the said Peoria Gas Light and Coke Company in its plant, and shall have the right to enter into and upon the

premises of the said Peoria Gas Light and Coke Company for that purpose.

Fifth. That the contract for the furnishing of gas upon the terms and conditions aforesaid, shall extend for and during the period of ten (10) years.

Sixth. That settlement for all gas furnished shall be made monthly on or before the 15th day of the month following that for which gas may have been furnished as above."

Said resolution having been read, on motion duly made and seconded, was duly adopted by a unanimous vote of the board present, and the president was instructed to submit said proposition in due form to the Peoria Gas Light and Coke Company, pursuant to its request, and in case said proposition should be accepted by said Peoria Gas Light and Coke Company, the president and secretary, on motion were duly authorized to execute a contract on behalf of this company, upon the terms and conditions set forth in said resolution.

There being no further business before the meeting, on motion the same adjourned.

THEO. J. MILLER, *Secretary.*

1960 JOHN MADIGAN, called on behalf of the defendant, being first duly sworn, deposes and says.

Direct interrogatories by Mr. MANSFIELD:

1. State your name and business?
A. John Madigan; brick manufacturer.
2. Where do you reside?
Ans. 7th Ave., West Bluff, Peoria, Ill.
3. Have you ever had any business transactions with the Peoria Gas & Electric Co.?
Ans. Yes sir;
4. What was the nature of those transactions?
A. Why, I have purchased coke from that company.
5. When did you purchase that coke?
A. I purchased it in June and July 1902, some in August and some in September, as late as yesterday, 1902.
6. Did you purchase any at any previous time?
A. I have been purchasing it for 10 years.
7. Did you purchase coke at any previous time from the Peoria Gas & Electric Co.?
Ans. No sir;
8. What, if you know, did you pay for the coke you purchased from the Peoria Gas & Electric Co., in 1902, as you state?

Objected to as incompetent and immaterial.

A. $4.50 per ton at their works and I had to do the hauling; it would be $5.00 per ton if they had to deliver it at my works.

9. Did you ever buy any coke from any other firm or company in the city of Peoria?

(Objected to as immaterial.)

A. I have bought it off of the old company, the Peoria Gas-light & Coke Company; I don't know whether it is all one company now or not; I could not say.

10. When did you buy coke from the Peoria Gas-light & Coke Co.?

Objected to as incompetent and immaterial.

The MASTER: I do not see the materiality of it at present but it may become material and the witness may answer subject to the objection.

1961

A. I have bought it right along every summer for the last 10 years.

11. Do you remember what you paid for the coke you purchased from the Peoria Gas-light & Coke Co., in the year 1897?

Objected to as incompetent, immaterial and irrelevant.

A. My books show I paid $3.00 and $3.50.

Complainant objects to the answer as incompetent.

The MASTER: I think the witness can testify to that independent of what his books show.

12. Do you know that of your own personal knowledge?

Ans. I do.

13. How do you know it?

A. I have looked over my accounts at my office to see what I paid for coke in years gone by.

Complainant objects to the answer as incompetent and immaterial his knowledge being received from records and accounts which are the best evidence.

The MASTER: I think if he has knowledge of it independent of any memorandum or book account it is competent.

Mr. IRWIN: He was just asked how he got his knowledge and he said from the books.

(The MASTER:)

14. Do you know what you paid for this coke independent of what your books show?

A. No I do not; I only know just what the books show except I know I have paid more for coke this season than I ever paid.

Complainant objects to the answer as immaterial and incompetent.

The MASTER: It may be admitted subject to the objection.

FRANK O. CUNNINGHAM, called on behalf of the defendant, bei first duly sworn, deposes and says.

1962 Direct interrogatories by Mr. MANSFIELD:

1. State your name and business?

A. Frank O. Cunningham; my business is loaning money pri cipally.

2. How long have you been engaged in that business?

A. For myself 26 or 27 years.

3. During all that time have you been engaged in business in th city of Peoria?

Ans. Yes sir.

4. State what in your opinion, from your experience in the busi ness just designated, would be a fair return to investors for mone loaned upon the best real estate security in and about Peoria?

Objected to as incompetent, immaterial and irrelevant to any o the issues in this case.

The MASTER: I do not see the materiality of it.

Mr. MANSFIELD: I would like to have the question answered sub ject to the objection.

The MASTER: He may answer subject to the objection.

A. For what length of time past; rates have varied materially.

5. Confine yourself in your answer to the rates that have obtained in the city of Peoria for the last year?

A. From 5% to 5½% is the best rate of interest, that, as a rule, can be obtained on choice real estate security.

6. Has there been any change in that rate for the last 4 or 5 years, if so, what variation has there been?

Objected to as incompetent, immaterial and irrelevant to the issues in this case.

The MASTER: He may answer subject to the objection.

A. 4 or 5 years ago money was worth 6% and the broker got a little commission on top of that—an investor got net 6% on his money 5 or 6 years ago, but now an investor can only get from 4½% to 5% and 5½%.

7. When did the rates change?

1963 Objected to same grounds.

A. They have been gradually declining since 5 years ago.

8. In making a loan on real estate do you take into consideration any of the hazards that enter into the nature of the business as it is carried on?

(Objected to same grounds.)

The MASTER: I do not see the materiality of it.

Mr. MANSFIELD: I would like to have it answer subject to the ob jection.

The MASTER: The witness may answer subject to the objection.

A. Yes sir; we certainly do.

9. To what extent do you take into consideration the hazards?

Objected to same grounds.

A. As a rule we do not regard a manufacturing establishment, hotel property, churches or theaters—property of that as choice real estate security in loaning money.

10. What would be the difference in the rates of interest charged on property of that kind as compared with other kinds of property, if any?

(Objected to same grounds.)

A. If loans were made they would be made at a little stronger rate of interest—that is my experience; they are not considered as desirable property to invest on as security.

JOSEPH P. DURKIN, called on behalf of the defendant, being first duly sworn, deposes and says.

Direct interrogatories by Mr. MANSFIELD:

1. State your name and business?

A. Joseph P. Durkin; secretary of the Title & Trust Co., Peoria, Ill.

2. In the performance of your duties as secretary of that company do you investigate and make loans on real estate?

A. I do.

1964 3. Where are those loans made?

Objected to as incompetent, immaterial and irrelevant.

A. On property in the city of Peoria and on farm lands in the Stute of Illinois.

4. How long have you been engaged in the business of investigating and making loans on real property in and about the city of Peoria?

Objected to as immaterial.

The MASTER: I think it is myself but I cannot tell what it may lead to. The witness may answer subject to the objection.

A. About 12 years.

5. What in your opinion, based on your experience, would be a fair return to investors for money loaned upon the best real estate security in and about the vicinity of Peoria?

Objected to as incompetent and immaterial.

The MASTER: I do not see the materality of it.

Mr. MANSFIELD: I would like to have an answer to the question.

The MASTER: He may answer subject to the objection.

A. About 5% net to investors on city property.

BERNARD CREMER, called on behalf of the defendant, being first duly sworn, deposes and says:

Direct interrogatories by Mr. MANSFIELD:

1. State your name and business?
A. Bernard Cremer; am publishing a newspaper.
2. Are you engaged in any other business?
A. I am president of the German-American national bank.
3. Were you acquainted with Chas. V. Newman?
Ans. Slightly.
4. Were you associated with him in any business connection on or about the 7th, day of May, 1901?

1965 Objected to as incompetent, immaterial and irrelevant.
The MASTER: I cannot tell you whether it is material or not. The witness may answer subject to the objection.

A. I had nothing to do with him only I signed a paper for him once when he was getting up an ordinance or something.
5. Were you associated with him in endeavoring to obtain a certain ordinance from the city of Peoria entitled, "An ordinance granting to Charles V. Newman, his associates, successors and assigns the right to lay gas mains and distribute gas in and along the several streets and highways in the city of Peoria"?
A. No I took no part in it; I know he wanted me to see some parties at the time but I had nothing to do with it.
6. Did you see those parties?

Objected to as incompetent and immaterial.

A. I went to see Mr. Greenhut and made arrangements for him to see Mr. Newman; that was all.
7. Do you know what the result of Mr. Newman's conversation with Mr. Greenhut was?

Objected to same grounds as before.
The MASTER: Answer the question yes or no, Mr. Cremer?

A. It resulted in nothing.
The MASTER: No, answer yes or no?
Ans. Yes.
8. What did he have the conference with Mr. Greenhut about, if you know?

Objected to as incompetent, immaterial and irrelevant.
The MASTER: He may answer if he knows subject to the objection.

A. About organizing a gas company—I guess it was; there was an ordinance passed and he had some privileges and I guess it was about that.
9. Do you remember about what time that ordinance was passed?
Objected to as immaterial.

1966 The MASTER: The witness may answer subject to the objection. If the ordinance was passed of course that would be the best evidence.

Mr. MANSFIELD: I want to connect it up so this conference will appear to be in connection with that ordinance.

A. I don't know exactly: I know it was warm weather; I don't recollect whether it was a year or two years ago; I didn't pay much attention to it.

10. Do you know whether or not the ordinance you have reference to was an ordinance "granting to Charles V. Newman, his associates successors and assigns the right to lay gas mains in and along the several streets and highways in the city of Peoria"?

Objected to as incompetent, immaterial and irrelevant.

A. I think it was.

11. Do you know what the result was, if you do please state it, of the conference had between Chas. V. Newman and Mr. Greenhut relative to this ordinance I have referred to?

Objected to same grounds as before and also because it calls for hearsay.

The MASTER: I do not see the materiality of it yet; it seems to me it is wholly immaterial but the witness may answer subject to the objection.

Mr. IRWIN: It don't appear that this witness was even present at the conference, and as to the result, that would be only a matter of opinion; the only thing that would be competent, if competent at all, would be what was said between the parties.

The MASTER: I understand and as I say I do not now see the competency or materiality of it, but the witness may answer subject to the objection.

A. All I know is Mr. Greenhut objected to going into the deal; that is all I know to tell the truth.

12. Did Mr. Greenhut ever give any reason to you for not
1967 going into it, or organizing the company under the ordinance in question?

Objected to as immaterial, incompetent and irrelevant and calling for hearsay.

The MASTER: I do not see the materiality of it.

Mr. MANSFIELD: I would like to have the question answered.

The MASTER: The witness may answer subject to the objection.

A. He objected to going into anything new; he did not want any new business; that was what I understood.

13. Did you have any conversation with any other parties with reference to the organization of that company?

Objected to as immaterial irrelevant and incompetent.

A. No. I don't know whether it was one or two years ago; I think Tom Coffey sent Mr. Newman to me or sent him to Mr. Greenhut—I don't know any more what it was, but I had no talk about it much; I didn't pay any attention to it.

Mr. IRWIN: Complainant moves to exclude all the testimony of this witness on the grounds that it is hearsay, incompetent, immaterial and irrelevant.

The MASTER: I will take your motion.

Mr. MANSFIELD: We will allow it to be excluded.

MORRIS G. PLANCK, re-called on behalf of defendant, deposes and says:

Direct interrogatories by Mr. MANSFIELD:

1. You are the same Morris G. Planck who testified in this case a few days ago?

Ans. Yes sir.

2. How long have you been a consumer of gas for fuel and illuminating purposes in the city of Peoria?

Objected to as incompetent and immaterial.

A. Since September 1, 1893.

1968 3. Do you know what was paid for gas used both for illuminating and fuel purposes in the city of Peoria since January 1, 1897?

Objected to as incompetent and immaterial and having nothing to do with the issues in this case, this complainant company not being in existence at that time.

A. I could not tell without referring to our bills.

4. Have you those bills with you?

Ans. Yes sir;

5. Will you refer to your bill for January, 1897, and state what prices prevailed at that time for both fuel and illuminating *gas* gas?

Objected to unless it was gas purchased from complainant company; what business the witness might have had with some other corporation or individual could not cut any figure so far as the rights of the complainant company are concerned; also because the question asks for the prices of the old company and it is apparent it is an individual case.

The MASTER: He may answer subject to the objection.

A. (Witness referring to bills.) We were paying at that time for illuminating gas $1.35 per thousand cubic feet with a discount of 10c. allowed for prompt payment; for fuel gas we were paying 75c. per thousand cubic feet net.

6. Look further at the bills you have before you and state for how long after that time those prices prevailed in the city of Peoria and when, if at any time, a change was made in those prices?

Objected to unless it was some purchase or dealing with the complainant company.

A. (Witness referring to bills.) My bills are all alike for fuel gas; there is a little difference at different times for illuminating gas, but we have never paid any more than 75c. per thousand feet for fuel gas, and since the time of the making of our contract two years ago last April we have only paid 50c. per thousand feet.

1969 7. With whom was that contract made you now refer to?

A. With the Peoria Gas-light & Coke Co.,

8. Can you state what change, if any, was made in the price of illuminating gas and when such change or changes were made by an examination of the bills before you?

Objected to same grounds as before.

The MASTER: That is the same question and it has already been ruled on; the witness may answer subject to the objection.

A. I believe I stated the price January 1, 1897 was $1.35 gross with a discount of 10c.; there was a change made June 1, 1899; the illuminating gas was changed from $1.35 per thousand feet to $1.00 per thousand cubic feet net.

9. Was there any further change made in the price of illuminating gas after that time?

Objected to as immaterial and irrelevant.

A. Not until the new company came into the field.

10. Does it show by your bills whether any change was made then when the new company came into the field?

A. Not according to the bills; they all run at $1.00 per thousand, but the prices were made by allowing a discount.

11. What was that discount, if you remember?

Objected to as incompetent and immaterial.

A. I think, so far as I can remember, that we paid for illuminating gas at the rate of $1.00 per thousand cubic feet up to the time we made our contract with the old company.

12. Were the prices you have testified to the prevailing current prices charged by the Peoria Gas-light & Coke Co., to all people generally in the city of Peoria?

Objected to as incompetent, immaterial and irrelevant.

A. They were.

1970 13. You had no special contract with the Peoria Gas-light & Coke Co., up to the time you made the special contract

under which you are now paying 50c. for gas per thousand cubic feet?

Objected to same grounds.

A. None whatever.

The MASTER: Are you ready now to proceed with the cross-examination of Mr. Little, Mr. Ritcher?

Mr. RITCHER: Yes sir, and it will take but a few minutes.

The MASTER: You may call him for that purpose.

Cross-examination of FRANCIS W. LITTLE by Mr. Irwin:

1. In your direct examination on page 1571 you were asked with reference to the extension of your main system of complainant company subsequent to September 30, 1900, and, as I remember, you testified there had been no material extension since that date. I will ask you why your main system subsequent to that date has not been extended materially throughout the city?

Objected to as immaterial and incompetent.

The MASTER: I do not think it material, but think it proper cross-examination. I did not see the materiality of it when the witness was asked about it on direct examination and I think I so ru'ed.

Mr. IRWIN: As the defendant saw fit to force it in on direct examination I think we have a right to an explanation of it.

The MASTER: I think so; the witness may answer subject to the objection.

A. There were two primary reasons why we did not extend the main system. First, because we did not want to make any extensive improvements or extensions until after the outcome of
1970*a* this present suit had been determined because we felt we already had enough money at risk and did not care to jeopardize any more; and further, there were some districts where we sought to get rights for laying mains and the ordinance authorizing it was vetoed by the mayor.

(The MASTER:)

2. Do I understand you to mean by that answer that you applied by ordinance for the right to make an extension?

A. Yes sir; we applied for an ordinance authorizing certain extensions in the 8th ward where there were no pipes whatever owned by any gas company; the ordinance was passed by the council and vetoed by the mayor.

(Mr. IRWIN:)

3. In your direct examination heretofore you were asked by counsel for defendant pertaining to a contract between the Peoria Gas-light & Coke Co., and the complainant company in this case and as to how that contract came about, and you there referred to

a letter from Mr. McKinley as the moving element that brought about that contract—have you that letter with you?

Ans. Yes sir;

4. Will you produce it?

Ans. Yes sir. (Produces letter.)

5. Are you acquainted with W. B. McKinley whose name is attached to this letter?

Ans. Yes sir;

6. He is the president, or was at that time, of the Peoria Gas-light & Coke Co.?

Ans. Yes sir;

Complainant's counsel offers in evidence the original letter produced by the witness and asks leave to substitute a copy for the record as the original is part of the records of complainant company, the original to be produced at any time when desired by court or counsel.

Objected to as immaterial and irrelevant.

Whereupon said letter was read to the master, subject to the objection, in the words and figures following, to-wit:

1971 Office of the Peoria Gas-light & Coke Co.

Officers:
W. B. McKinley president & supt.
Geo. E. Macomber, sec. & treas.

PEORIA, ILL., *Oct. 2nd*, 1901.

To the Peoria Gas & Electric Company, Peoria, Illinois.

GENTLEMEN: A large amount of the machinery and apparatus of the Peoria Gas Light & Coke Company of this city has become in bad condition and repair by reason of its long continued use in the manufacture of gas, and in order to continue the manufacture of gas economically, it will require the expenditure of a large amount of money in the renewal and repair of certain parts of the machinery and apparatus in our plant.

It has been thought best by the board of directors of our company that in view of your gas plant being new and of ample capacity to manufacture all the gas in the city of Peoria, that it might be more economical for our company to purchase gas from your company sufficient to supply our consumers and customers at least for the present, so as to avoid the immediate outlay required for the renewal of our plant. To that end we would be pleased to have a proposition from your company for the furnishing of a sufficient supply of gas to the Peoria Gas Light & Coke Company to supply its consumers and customers, as we believe that an arrangement of this character might be made that would be of advantage to all parties interested without detriment or additional cost to gas consumers.

An early reply is desired, as, if no arrangement can be made with your company for the supply of gas, it will be necessary for us to proceed with the general repairs to our plant.

(Signed) W. B. McKINLEY,
Pres. P. G. L. & C. Co.

Exhibit "37." I. C. Pinkney, master.

7. In your direct examination you testified with reference to the contract Exhibit "32" between the Peoria Gas-light & Coke Co., and the Peoria Gas & Electric Co., under which your company was furnishing gas to that company, that you had received some notice of the termination of that contract—was that notice in writing?

A. Yes sir;

8. Have you the notice with you?

Ans. Yes sir;

9. Will you produce it?

Ans. Yes sir; (Produces notice.)

1972 Complainant's counsel offers in evidence the notice produced by the witness and asks leave to substitute a copy for the record.

Objected to as immaterial and irrelevant.

The MASTER: It may go in evidence subject to the objection.

Whereupon said notice was read to the master in the words and figures following, to-wit:—

"PEORIA, ILL., *Feb.* 15, 1902.

To the Peoria Gas & Electric Company, city:

You are hereby notified that by a vote of the board of directors of the Peoria Gas Light & Coke Company, we are instructed to notify you of our election to terminate the contract between said companies, dated October 21st, 1901, under the terms thereof; that this company will terminate the same at the expiration of six months from the date hereof, as provided by the terms of said contract.

PEORIA GAS LIGHT & COKE COMPANY,
By W. B. McKINLEY, *Its President.*"

Exhibit "38." I. C. Pinkney, master.

10. State whether or not that contract has been terminated in pursuance of the notice just read in evidence.

Ans. Yes sir;

11. About what date was it finally terminated?

A. We ceased to supply them with gas on the night of August 19, 1902.

12. In your direct examination you were asked for statements showing the amount of gas and the settlement therefor, between the

Peoria Gas-light & Coke Co., and complainant company, under the contract Exhibit "32," referred to, as well as for repairs and the work required to be done under that contract. You produced, as I recollect it, a number of statements marked Exhibit "33" showing the amount of gas furnished and also other statements which were not offered in evidence by defendant—Have you those other statements with you?

1973

A. Yes sir; I have the statements showing the amount of labor and material furnished to the Peoria Gas-light & Coke Co., under that contract for the *varies* services which the Peoria Gas & Electric Co., performed for the account of the Peoria Gas-light & Coke Co., in accordance with the terms of the contract.

13. Those statements are made up for what period?

A. They are in the form of monthly bills and are from October 24, 1901, to July 31, 1902.

14. Were those several monthly statements for the period named settled for as stated in your former examination and paid for by the Peoria Gas-light & Coke Co.?

Ans. Yes sir;

15. Will you produce those statements?

A. Yes sir; (Witness produces statements)

Complainant's counsel offers in evidence the statements produced by the witness, said statements being marked Exhibit "39" consisting of 9 sheets.

Objected to as immaterial and incompetent.

Mr. IRWIN: These statements are offered in evidence for the purpose of showing the complete transaction between the two companies under that contract.

The MASTER: They may be admitted subject to the objection.

Whereupon said statements were read to the master in the words and figures following, to-wit:

1974 EXHIBIT "39." I. C. Pinkney, Master.

(9 sheets.)

See Exhibits "33 & 45." This is not a duplicate.

PEORIA, ILL., *November* 30, 1901.

Peoria Gas Light and Coke Company, Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

Labor and Material Furnished from Oct. 24, 1901, *to Nov.* 30, 1901.

	Labor.	Material.	Total.
Connecting old stoves	29.30	32.58	61.88
Caring for complaints	105.88	4.32	110.20
Removing and setting old meters.	63.60	24.59	88.19
Repairing meters	48.58	14.70	63.28
Running new services	110.91	129.08	239.99
Extdg. servcs. for setting meters.	9.04	12.44	21.48
Setting new stoves	17.36	18.81	36.17
Repair services	23.65	17.39	41.04
	408.32	253.91	$662.23

1975 EXHIBIT "39" (Continued). I. C. Pinkney, Master.

PEORIA, ILL., *December* 31, 1901.

Peoria Gas Light and Coke Company, Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

Labor and Material Furnished During December, 1901.

	Labor.	Material.	Total.
Connecting old stoves	23.70	13.47	37.17
Caring for complaints	145.91	53.54	199.45
Removing and setting old meters.	63.75	12.01	75.76
Repairing meters	49.87	14.34	64.21
Running new services	42.76	42.45	85.21
Extdg. servcs. for setting meters.	.....	7.89	7.89
Setting new stoves	15.43	12.06	27.49
Repairing services	6.35	.....	6.35
	347.77	155.76	$503.53

1976 EXHIBIT "39" (Continued). I. C. Pinkney, Master.

PEORIA, ILL., *January* 31, 1902.

Peoria Gas Light & Coke Company, Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

Labor and Material Furnished During January, 1902.

	Labor.	Material.	Total.
Connecting old stoves	14.76	5.99	20.75
Caring for complaints	110.79	15.21	126.00
Removing & setting old meters	69.24	15.31	84.55
Repairing meters	67.56	5.40	72.96
Running new services	.25	.....	.25
Extdg. servcs. for set. meters	4.48	10.58	15.06
Setting new stoves	4.85	2.15	7.00
Pumps drips	7.50	.....	7.50
Setting new meters	8.32	37.80	46.12
Getting measures of mains	33.59	....	33.59
	321.34	92.44	$413.78

1977 EXHIBIT "39" (Continued). I. C. Pinkney, Master.

PEORIA, ILL., *February* 28, 1902.

Peoria Gas Light and Coke Company, Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

Labor and Material Furnished During February, 1902.

	Labor.	Material.	Total.
Setting new stoves	8.08	4.42	12.50
Removing and setting meters	54.05	10.20	64.25
Connecting old stoves	15.57	13.82	29.39
Caring for complaints	126.89	11.00	137.89
Running new services	6.52	.....	6.52
Extdg. servcs. for set. meters	4.32	6.82	11.04
Repairing services	.50	.....	.50
Repairing meters	82.90	25.94	108.84
Setting new meters	.52	47.71	48.23
Taking measurements of mains	20.08	.....	20.08
Loading coke and tar	123.98	.....	123.98
	443.31	119.91	$563.22

1978 EXHIBIT "39" (Continued). I. C. Pinkney, Master.

PEORIA, ILL., *March* 31, 1902.

Peoria Gas Light and Coke Company, Peoria, Illinois, to Peoria Ga and Electric Company, Dr.

Labor and Material Furnished During March, 1902.

	Labor.	Material.	Total.
Setting new stoves	15.36	9.45	24.81
Removing and setting meters	54.39	1.55	55.94
Connecting old stoves	18.68	10.86	29.54
Caring for complaints	76.96	18.73	95.69
Running new services	55.37	43.33	98.70
Extdg. servcs. for set. meters	1.16	.58	1.74
Repairing services	3.75	.....	3.75
Repairing meters	72.93	17.54	90.47
Setting new meters	2.46	36.08	58.54
Taking measurements of mains	49.68	.....	49.68
Loading coke and tar	299.04	.....	299.04
	649.78	138.12	$787.90

1979 EXHIBIT "39" (Continued). I. C. Pinkney, Master.

PEORIA, ILL., *April* 30, 1902.

Peoria Gas Light and Coke Company, Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

Labor and Material Furnished During April, 1902.

	Labor.	Material.	Total.
Setting new stoves	31.73	23.34	55.07
Removing and setting meters	50.94	12.67	63.61
Connecting old stoves	35.58	34.86	70.44
Caring for complaints	64.28	8.16	72.44
Running new services	121.51	178.07	298.58
Extdg. servcs. for set. meters	2.81	11.51	14.32
Repairing services	5.25	1.53	6.78
Repairing meters	47.60	10.16	57.76
Setting meters (new)	4.14	114.84	118.98
Taking measurements of mains	49.81	12.30	62.11
Loading coke and tar	8.38	21.87	30.25
Loading car 12" pipe sold	13.50	.....	13.50
	434.53	429.31	863.84

1980 EXHIBIT "39" (Continued). I. C. Pinkney, Master.

PEORIA, ILL., *May* 31, 1902.

Peoria Gas Light & Coke Company, Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

Labor and Material Furnished During May, 1902.

	Labor.	Material.	Total.
Setting new stoves	59.79	184.30	244.09
Removing and setting meters	63.76	9.62	73.38
Connecting old stoves	52.83	61.90	114.73
Caring for complaints	70.65	7.13	77.78
Running new services	357.53	256.56	614.09
Extdg. servcs. for set. meters	9.43	32.69	42.12
Repairing services	18.74	11.82	30.56
Repairing meters	43.85	24.38	68.23
Setting new meters	8.00	186.95	194.95
Loading coke and tar	.85	.....	.85
	685.53	775.35	$1460.78

1980*a* EXHIBIT "39" (Continued). I. C. Pinkney, Master.

PEORIA, ILL., *June* 30, 1902.

Peoria Gas Light and Coke Company, Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

Labor and Material Furnished During June, 1902.

	Labor.	Material.	Total.
Setting new stoves	56.84	558.03	614.87
Removing and setting meters	65.48	31.43	96.91
Connecting old stoves	51.68	69.55	121.23
Caring for complaints	79.63	6.71	86.34
Running new services	254.01	200.02	454.03
Scrape and paint holder	17.25	.....	17.25
Repairing services	101.01	79.93	180.94
Repairing meters	32.80	9.18	41.98
Setting new meters	12.52	101.62	114.14
Taking measurements of mains	4.54	.....	4.54
Laying 1202 feet 8" pipe and 336 ft. 4" pipe on Wisconsin Ave. from Illinois to Nebraska	361.81	946.63	1308.44
Laying 4" pipe on Howett St. from Pope to Warner St	121.05	255.43	376.48
Recalk 6" main on Bourland and Saratoga Sts. from Moss Ave. to Main St	118.60	.....	118.60
Recalk mains on Sanford from First to Prairie St	5.19	.....	5.19
	1282.41	2258.53	$3540.94

1980*b* EXHIBIT "39" (Continued). I. C. Pinkney, Master.

PEORIA, ILL., *July* 31, 1902.

Peoria Gas Light and Coke Company, Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

Labor and Material Furnished During July, 1902.

	Labor.	Material.	Total.
Setting new stoves	72.72	795.06	867.78
Removing and setting meters	55.39	35.17	90.56
Connecting old stoves	29.38	32.49	61.87
Caring for complaints	82.28	.70	82.98
Running new services	444.78	340.91	785.69
Ext'd'g servcs. for set. meters	23.85	71.18	95.03
Repairing meters	53.31	1.88	60.19
Setting new meters	1.60	66.54	68.14
Laying 450 ft. 4" pipe on Glendale from Caroline to Mary, and 400 ft. 2" on Caroline from Perry to Glendale	137.19	204.56	341.75
Laying 4" stub at cor. University and Windom	4.26	10.99	15.25
Recalk 1186 ft. 4" pipe on University street	55.52	.40	55.92
Remove 300 ft. 3" main on Harrison bet. Water & Washington	53.93	5.36	59.29
Recalk 1120 ft. 4" & 3" pipe on Randolph Ave	95.84	.20	96.04
Material from storeroom for old works	.....	30.15	30.15
	1115.05	1595.59	$2710.64

1980*c*

EXHIBIT "39."

PEORIA, ILL., *November* 30, 1901.

Peoria Gas Light & Coke Co., Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

11,041,400 cu. ft. gas @ 75c	$8281.05
2,024,800 " " " @ 50c	1012.40
	$9293.45

1980*d*

PEORIA, ILL., *December* 31, 1901.

Peoria Gas Light & Coke Co., Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

12,757,600 cu. ft. gas @ 75c	9568.20
419,400 " " " @ 50c	209.70
	$9777.90

1980*e*

PEORIA, ILL., *January* 31, 1902.

Peoria Gas Light & Coke Co., Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

11,003,400 cu. ft. gas @ 75c	$8252.55
1,608,000 " " " @ 50c	804.00
	$9056.55

1980*f*

PEORIA, ILL., *February* 28, 1902.

Peoria Gas Light & Coke Co., Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

10,618,400 cu. ft. gas @ 75c	7963.80
1,918,800 " " " @ 50c	959.40
	$8923.20

1980*g*

PEORIA, ILL., *March* 31, 1902.

Peoria Gas Light & Coke Co., Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

9,229,200 cu. ft. gas @ 75c	6921.90
756,100 " " " @ 50c	378.05
	$7299.95

1980*h* PEORIA, ILL., *April* 30, 1902.

Peoria Gas Light & Coke Co., Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

9,434,400 cu. ft. gas @ 75c	7075.80
667,900 " " " @ 50c	333.95
	$7409.75

1980*i* PEORIA, ILL., *May* 31, 1902.

Peoria Gas Light & Coke Co., Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

7,804,600 cu. ft. gas @ 75c	5853.45
1,049,200 " " " @ 50c	524.60
	$6378.05

1980*j* PEORIA, ILL., *June* 30, 1902.

Peoria Gas Light & Coke Co., Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

8,452,200 cu. ft. gas @ 75c	6339.15
572,600 " " " @ 50c	286.30
	$6625.45

1980*k* PEORIA, ILL., *July* 31, 1902.

Peoria Gas Light & Coke Co., Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

7,866,400 cu. ft. gas @ 75c	5899.80
483,300 " " " @ 50c	241.65
	$6141.45

1981 Re-direct interrogatories by Mr. MANSFIELD:

1. Could you, from an examination of the books of your company give an itemized statement as to where and when this work was performed as shown by these statements just read in evidence?

Objected to as not proper re-direct.

The MASTER: I do not think it proper re-direct, still he may answer that question as to whether or not he could do it from an examination of the books; it is only a preliminary question.

A. No sir; not all of it.

2. How do you know then this labor and material was furnished to the Peoria Gas-light & Coke Company, if you could not determine from your books where it was done or when it was done?

Objected to as not proper re-direct.

A. I think I explained that in my former testimony; we use what is known as a card system—Interrupted——

The MASTER: Yes, I remember you testified to that and I will not allow the record to be duplicated by going over it again. That was gone into fully by you Mr. Mansfield in your direct examination of this witness.

3. Are the statements you have produced here a copy of the bills that were furnished to the Peoria Gas Light & Coke Co., as testified to by you in your former examination?

A. Yes sir; they are copies of the bills that were rendered monthly to the Peoria Gas-light & Coke Company.

4. Was this all of the account, or were the items specified and the places where the work was done furnished to the Peoria Gas-light & Coke Company?

Objected to as not proper re-direct.

The MASTER: You are referring to Exhibit "39" just offered in evidence, are you?

Mr. MANSFIELD: Yes sir;

1982 The MASTER: I think that competent; the witness may answer subject to the objection.

A. The bills were given just as they are presented here—just as they were rendered to the Peoria Gas light & Coke Company; the bills when rendered were the cards which showed the amount and kind of work done and the place where done, but no copies were kept of those.

(The MASTER:)

5. This is an assembling of those accounts then in this form?

A. It could hardly be considered an assembling of the accounts; it covers the material as returned by the storekeeper in the original monthly storekeeper's reports, and the labor as taken from the monthly pay-rolls, which were the books of original entry of our company; the cards which showed the details of each transaction are corroborative evidence of this.

(Mr. MANSFIELD:)

6. Then so far as the items contained in these bills marked Exhibit "39" are concerned, you don't know what those items are and have no means of obtaining that knowledge from the books and records of your company?

Objected to as not proper re-direct, having already been answered both on direct and cross-examination.

A. The books and records of our company show merely the delivery of the material and the performance of the labor where that labor was used and probably as to the details of the material our books are silent; I am not absolutely sure with reference to the material since it may be that the storekeeper's supply tickets show just where the material was sent.

7. Is Exhibit "39" a copy of the original bills that were presented to the Peoria Gas-light & Coke Co.?

Objected to as already answered.

The MASTER: I think so, but he may answer it again if
1983 there is any doubt about it.

A. Yes sir.

8. From what source did you obtain this copy?

Objected to same grounds as before.

A. From the files in our office.

9. Did you not testify on direct examination that it was impossible for you to give a correct statement of the matters contained in this Exhibit "39"?

Objected to as misquoting the record and not a proper way of calling the attention of the witness to it.

The MASTER: No, I will not allow you Mr. Mansfield to cross-examine your own witness or impeach his testimony.

10. In your cross-examination you stated with reference to laying more mains in the city of Peoria that the reason you did not do so was on account of the pendency of this suit and you did not care to risk any more money—why was it you made the change with reference to the pipes you proposed to lay in the 8th ward in the city of Peoria?

A. Because there were no pipes whatever in that district and because the people living there were anxious to have a supply of gas and had frequently petitioned the company to furnish them with gas.

Defendant rests its case.

Adjourned by agreement until Monday, September 15, 1902, to meet at such place as may be designated by the master.

1983*a* EXHIBIT "34." I. C. Pinkney, Special Master.

The following is a portion of the minutes of the council proceedings of the city of Peoria, Illinois, on the 21st day of March, 1899:

"People's Gas and Electric Company petitioned for an ordinance."

Referred to S. A. & B. committee.

STATE OF ILLINOIS, } ss:
Peoria County, }

I hereby certify that the foregoing is a true copy of the minutes of the council proceedings on file in my office.

[MUNICIPAL SEAL.] ROB'T. M. ORR, *City Clerk.*

1983*b* Filed 3/21/99.

ROB'T M. ORR, *City Clerk.*

Referred to S. A. & B. committee, March 21, 1899.

ROB'T M. ORR, *City Clerk.*

EXHIBIT "35." I. C. Pinkney, Special Master.

To the honorable mayor and city council of the city of Peoria, Illinois:

Your petitioner, The People's Gas and Electric Company, a corporation recently organized for the purpose of furnishing gas and electric light to the inhabitants of the city of Peoria, herewith presents its ordinance for the consideration of your honorable body, and also presents herewith certain frontage consents secured up to the present time. The company has ample financial support and intends, in good faith, to enter into the business of furnishing gas and electric light, if it receives an ordinance from your honorable body. The company respectfully asks that said ordinance receive your early and favorable consideration.

Respectfully submitted,

PEOPLE'S GAS AND ELECTRIC COMPANY,
By SUMNER R. CLARKE, *President.*

STATE OF ILLINOIS, } ss:
County of Peoria, }

I, Robert M. Orr, city clerk of the city of Peoria do hereby certify that the foregoing is a true and correct copy of the original petition of the People's Gas & Electric Company for an ordinance to furnish gas to the city of Peoria and its inhabitants of which it purports to be a copy, as the same appears among the records of my office.

Witness my hand and the official seal of said city 21st day of February, A. D. 1902.

[SEAL.] ROB'T M. ORR, *City Clerk.*

1983c EXHIBIT "36." I. C. Pinkney, Special Master.

Official Proceedings.

Council Chamber.

PEORIA, ILL., *April* 18, 1899.

A regular meeting of the city council was held this evening, all the members being present except Aldermen Bryan and Lynch.

Franchises Granted.

Both of the ordinances granting franchises to the People's Gas and Electric Company were read by the clerk.

The first one read related to the laying of gas pipes and the furnishing of gas.

Alderman Oden offered a substitute to article 3, which was adopted naming streets more numerous than in the ordinance, in which pipes are to be laid.

Alderman Gorman offered an amendment, in which it was provided among other things, that pipes, mains and service pipes shall be laid as not to interfere with or injure the pipes or mains owned by the city of Peoria or by any other persons or corporations.

On motion of Alderman Carroll, the amendment was laid on the table by 8 ayes and 4 noes.

Ayes—Alderman Carroll, Dechman, Kellerstrass, Hecht, Louis, Oden, Peck, Thode, Wolschlag.

Noes—Alderman Gorman, McFadden, Powell, Thode.

Alderman Thode offered an amendment, which was lost, providing for a deposit with the comptroller of $10,000 as a guarantee of the faithful performance of the provisions of the ordinance.

Alderman Oden offered a substitute for Alderman Thode's amendment, which was adopted as an amendment to article 4, providing for the deposit of $5,000 to be returned when $50,000 shall have been expended, and to be forfeited if the company does not begin work or supply gas in the time specified.

Alderman Gorman made a motion, which was not seconded, providing that the company be compelled to parallel the former gas company.

Alderman Oden offered an amendment to article 6, which was adopted, providing that whenever any street is about to be
1983d permanently improved by paving or macadamizing, the commissioner of public works shall notify said company of such proposed improvement, and within sixty days after such notification the company shall lay its mains including all service pipes and connections to the curb line at its own cost and expense.

By unanimous vote of 12 ayes, the ordinances as amended were adopted.

Alderman Carroll then moved a reconsideration of the motion adopting the ordinance, and on motion of Alderman Oden the motion to reconsider was laid on the table.

STATE OF ILLINOIS, }
County of Peoria, } ss:

I, Robert M. Orr, city clerk of the city of Peoria, do hereby certify that I am city clerk of the said city of Peoria, and keeper of the records of said city, and that the annexed and foregoing is a true copy of a part of the official proceedings of the city council held on the 18th day of April, 1899, of which it purports to be a copy, as the same appears among the records of my office.

Witness my hand and the official seal of said city this 12th day of March, A. D. 1902.

[MUNICIPAL SEAL.] ROB'T M. ORR, *City Clerk.*

1983*e* EXHIBIT "22." I. C. Pinkney, Master.

PEORIA, ILLINOIS, *January* 29, *A. D.* 1901.

We hereby certify that at a special meeting of the stockholders of the Peoria Gas and Electric Company, held at Peoria, Illinois, on the twenty-ninth day of January, A. D. 1901, pursuant to notice given in the manner provided by law, the following question was submitted to the stockholders:

"Resolved That the capital stock of this company be and the same is hereby increased, so that the same shall be two million dollars—which said resolution was adopted by the affirmative vote of more than two thirds of all the stock of such corporation.

In witness whereof we have hereunto set our hands and affixed the seal of said corporation this 29th day of January, A. D. 1901.

[Peoria Gas and Electric Company Seal.]

THEODORE J. MILLER, *President.*
SUMNER R. CLARKE, *Secretary.*

(Revenue stamp 10 cents.)

STATE OF ILLINOIS, }
County of Peoria, } ss:

Sumner R. Clarke being first duly sworn on oath says, that he is the president of the Peoria Gas and Electric Company, the corporation mentioned in the foregoing certificate and that he has read the foregoing certificate subscribed by him as such president, and knows the contents thereof, and that the same is true.

SUMNER R. CLARK.

1983*f* Subscribed and sworn to before me, this twenty-ninth day of January, A. D. 1901.

[Seal of Lizzie A. Pulsipher, Notary Public, Peoria Co., Illinois.]

LIZZIE A. PULSIPHER,
Notary Public.

STATE OF ILLINOIS, } ss:
Peoria County, }

I, John Johnston, recorder of deeds, within and for the said county and State aforesaid, and keeper of the records of said recorder's office, do hereby certify that I have compared the foregoing copy of increase of stock: Peoria Gas and Electric Company, dated Jan. 29, 1901. filed Jan. 29, 1901 at 6.05 p. m. recorded in vol. 5 of Corp. page 204 with accompanying certificate with the original record in my office, and found the same to be a true and correct transcript of the whole of such record.

Witness my hand and official seal at Peoria, this 15th day of Feb'y. A. D. 1902.

[SEAL.]

JOHN JOHNSTON,
Recorder of Deeds.
——— ———, *Deputy.*

1983*g* UNITED STATES OF AMERICA, }
Northern District of Illinois. }

In the Circuit Court of the United States, Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY }
vs. }
CITY OF PEORIA. }

Affidavit of Henry Mansfield.

STATE OF ILLINOIS, } ss:
Peoria County, }

Henry Mansfield, being duly sworn, on oath states that he is city attorney of the city of Peoria, Illinois, and as such is in charge of the defense in behalf of said city in the above entitled case.

Affiant further states that the Peoria Gas Light & Coke Company, a corporation of Peoria Illinois, received its charter from said State about the year 1855; that for many years prior to about October 24, 1901, it was engaged in manufacturing and selling gas in the ordinary way, for illuminating and fuel purposes in said city of Peoria, and in the territory adjacent thereto, and until about May 1, 1900, it was the only company engaged in the business aforesaid within said city and its suburbs; that while the said company so

continued the manufacture and sale of gas its business was identical in character with that now and heretofore carried on by complainant company in a part of the same district.

1983*h* Affiant further states that he has reason to believe, and does believe and so states that the books of account, statements, reports, etc., kept by said Peoria Gas Light & Coke Company in the usual and regular course of its business for the five years ending May 1, 1900, called for by a certain subpœna entitled in said cause, and duly and legally served on Henry W. Bicknell, in the service of said company, and who has testified herein, said subpœna having been served on the 25th day of June, 1902, a copy of which is hereto attached, for greater certainty, and made a part hereof, contain material, proper, pertinent and necessary to a proper defense on behalf of said City of Peoria in said cause; that from said material so called for affiant will be able to prove the cost of gas delivered to consumers in said Peoria district during said five years, together with all other facts of a material character in connection with said business, and that such proof will establish, or tend to establish, the fact that the ordinance passed by the city council of said city, fixing a maximum rate of seventy-five cents per thousand cubic feet to be charged by gas companies operating therein, is not unreasonable in respect to the maximum rate so fixed, but on the contrary that said price in every respect is fair and just to said gas companies, and in no manner operates as a hardship or injustice to them, or to either of them, or to any of the parties interested therein.

Affiant further states that substantially all the territory in the Peoria district reached by complainant company is now, and for many years last past has been supplied with gas service by said Peoria Gas Light & Coke Company; that complainant company began active operations in furnishing gas about May 1, 1900, its customers then and now being almost wholly within the field reached by said Peoria Gas Light & Coke Company.

[NOTARIAL SEAL.] HENRY MANSFIELD.

Signed and sworn to before me this 27th day of June, A. D. 1902.

MARY E. POWELL,
Notary Public.

1983*i* UNITED STATES OF AMERICA,
Northern District of Illinois, Southern Division, } ss:

The President of the United States of America to the marshal of the northern district of Illinois, Greeting:

You are hereby commanded to summon Thomas N. Gorman Henry W. Bicknell & Francis S. Kelley if he shall be found in your bailiwick, to be and appear before me, I. C. Pinkney, special master in chancery for the northern district of Illinois, southern

division aforesaid, at the United States court room, in the city of Peoria, on the 26 day of June at 2 o'clock p. m. and to bring with him and produce at the time and place aforesaid, to be used as evidence, all books of account of the Peoria Gas Light & Coke Company, of Peoria, Illinois, from May 1, 1895 to May 1, 1900, including any and all books in which were made any entries pertaining to the business of said company; also all said company's secretary's monthly and other reports to its board of directors, and to the company and to its stockholders for the same period; also all its treasurer's statements and reports to its board of directors, and to the company, and to its stockholders for the same period; also *and* all other reports, schedules, statements, papers, documents, data, memoranda, books and records of the said Peoria Gas Light & Coke Company, and of any and all of its officers, clerks and employés, for said period, pertaining to the business of said company, and especially with reference to its earnings, during said period, and every part thereof, and then and there to testify and the truth to speak in a case pending before me, wherein The Peoria Gas and Electric Company is complainant, and The City of Peoria is defendant.

Hereof fail not, under the penalty of the law, and have you then and there this writ, with the endorsement thereon in the manner in which you have executed the same.

Given under my hand this 25 day of June A. D. 1902.

I. C. PINKNEY,
Special Master, United States Circuit Court.

1983*j* Department of justice, office of the United States marshal northern district of Illinois, southern division.

John C. Ames, U. S. marshal. S. O. Tripp, deputy.

PEORIA, ILL., *June 25th*, 1902.

Hon. Henry Mansfield, city attorney, Peoria, Illinois.

MY DEAR SIR: I have the honor to inform you that I have this day served the subpœna on Thomas N. Gorman, Henry W. Bicknell and Francis S. Kelley, in the case of The Peoria Gas and Electric Company *vs.* The City of Peoria. I enclose herewith receipt for marshal's fees in said case.

Very respectfully,

JOHN C. AMES,
U. S. Marshal,
By S. O. TRIPP, *Deputy.*

1983*k* Vol. 7, Schedule "B." Israel C. Pinkney, Special Master.

Filed Jun- 3, 1903. Marshall E. Sampsell, Clerk.

1983*l* UNITED STATES OF AMERICA, *State of Illinois,* } ss:

In the Circuit Court of the United States for the Northern District of Illinois, Southern Division.

PEORIA GAS & ELECTRIC COMPANY *vs.* CITY OF PEORIA. } In Chancery. Vol. 7.

Testimony taken in the above entitled cause before Judge I. C. Pinkney, special commissioner, at the places designated in the following pages, on September 23rd and 24th and 25th at Chicago, Ill.; on Sept. 26th at Peoria, Ill.; on October 16th and 17th at Chicago, Ill., and on October 20th, 1902, at Peoria, Ill.

Index to Witnesses.

Names.	Direct.	Cross.	Re-direct.	Re-C.
Abbott, William T.....	1983	2001		
McDonald, Donald.....	2015	2028	2135	
Little, Francis W. (re-called)...	2036, 2087	2096	2147	
Robb, J. M. (").....	2084			
Henebery, Mathew (").....	2152	2155	2161	2162
Robison, Leslie (").....	2164	2167	2172	2172

Documentary Evidence.

Certified copies proceedings directors Peoria, Gas-light & Coke Co., Oct. 2d, and 21st, 1901, and Feb'y 15, '02. Ex. 40, 41, 42.....	P. 1986
Stipulation between parties for extension of time, etc.....	2059½
Operating statements, Exhibits "43 & 44".....	2060
Statement of account between compl'n't Co. and old company, "45".....	2078
Schedule of prices old company 1897 to 1902, inclusive "Ex. 46".....	2086
Operating statement month of Sept. 1902, "Exhibit 47"...	2094
Cost of plant and property of complainant company as of September 30, 1902, "Exhibit 48".....	2095

(Close of testimony.)

1983*m* *Rebutting Evidence on the Part of Complainant.*

Directors' room, Equitable Trust Co., Chicago Nat. Bank bldg.

TUESDAY, *September* 23, 1902—10 o'clock a. m.

Parties met pursuant to call of the special commissioner.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin, Mr. R. C. Ritcher and Mr. W. T. Abbott, appearing for complainant. Mr. Henry Mansfield, city attorney, and Mr. F. H. Tichenor, appearing for defendant.

WILLIAM T. ABBOTT, called on behalf of the complainant, being first duly sworn, deposes and says.

Direct interrogatories by Mr. IRWIN:

1. State your name, residence and business?

A. William T. Abbott; Peoria, Ill; am a lawyer practicing in Peoria, Illinois.

2. You are one of the attorneys of record now in this suit?

A. I am.

3. Were you one of the attorneys at the time of the commencement of this suit?

Ans. I was not.

4. Do you remember about what time you became identified with this case?

A. It was either in the latter part of November or early in December 1901—after the first evidence had been taken in Chicago and Peoria.

5. Who employed you, if anyone, to become identified with this case?

A. The Peoria Gas-light & Coke Co.; I came into the suit at the request of Mr. McKinley, president of the Peoria Gas-light & Coke Company, it being his desire that I should attend the remaining hearings in the case with a view to a better preparation of a similar case of the Peoria Gas-light & Coke Company's, which was, and still is, pending in the same court.

6. Who, if anyone, pays you your fees for your attendance and work in the present case?

1984 Ans. The Peoria Gas-light & Coke Co.

7. Have you received any compensation from any other source?

A. I have not.

8. Do you expect any from any other source?

Ans. I do not.

9. What official position, if any, do you hold in the Peoria Gas-light & Coke Co?

Ans. I am secretary of the company.

10. How long have you held that position with the company?

A. Since May 1901.

11. As secretary of the company do you have access to and examine the records of the company?

Ans. I do.

12. Were you secretary of the Peoria Gas-light & Coke Co., at or about the time of the entering into the contract with the complainant in this case for the furnishing of gas in evidence dated in October 1901, and marked Exhibit "32"?

Ans. I was.

13. Have you with you the minutes of the proceedings of the board of directors of the Peoria Gas-light & Coke Co., pertaining to the contract Exhibit "32" in evidence, relative to furnishing gas to said company?

Ans. I have certified copies of those minutes.

14. Have you the first minutes of the proceedings of the board of directors where the matter came before your board?

Ans. I have.

15. Will you produce them?

Ans. Yes sir. (Witness producing minutes.)

16. On what date was that meeting held?

A. October 2, 1901. I now produce a certified copy of the minutes of a special meeting of the board of directors of the Peoria Gas Light & Coke Co., held on October 2, 1901, and hand the same to the master for the purpose of being marked for identification.

Mr. TICHENOR: We object to the use of the copy the original not being accounted for and that being the best evidence.

Mr. Irwin, of complainant's counsel, offers in evidence the copy of the minutes of the proceedings of a special meeting of the
1985 board of directors of the Peoria Gas Light & Coke Co., produced by the witness of date October 2, 1901.

Objected to as incompetent, improper and immaterial, and also as not proper evidence in rebuttal.

The MASTER: The minutes may be admitted subject to the objection made; I doubt, however, their competency as rebutting evidence.

17. Were there any other meetings of the board of directors of the Peoria Gas-light & Coke Co., pertaining to the contract marked Exhibit "32" for the furnishing of gas by the complainant company to the Peoria Gas-light & Coke Co.?

Objected to same grounds as before.

A. Another meeting was held on the 21st, day of October 1901, a certified copy of the record of which I now produce and hand to the master for the purpose of being marked for identification.

Mr. Irwin, of counsel for complainant, offers in evidence the cer-

tified copy, produced by the witness, of the minutes of the proceedings of the board of directors held on the 21st, day of October 1901.

Objected to as incompetent, improper, immaterial and not proper rebuttal evidence.

The MASTER: Same ruling.

18. Did the directors of the Peoria Gas-light & Coke Co., hold another meeting pertaining to said contract marked Exhibit "32" relative to furnishing that company gas by the complainant company?

A. A meeting was held on February 15, 1902, to discuss the proposition of terminating the said contract, a certified copy of the record of which I now produce and hand to the master to be marked for identification.

Mr. TICHENOR: The defendant objects to that portion of the foregoing answer purporting to state the purpose of the meeting and also because the answer is not responsive and moves the court to exclude it.

1986 Mr. IRWIN: I presume that part of the answer stating the purpose of the meeting would be incompetent as the paper would be the best evidence of that.

The MASTER: I think so, but still it will not do any harm.

Mr. Irwin, of counsel for complainant, offers in evidence the certified copy, identified by the witness, of the minutes of the meeting of the board of directors of the Peoria Gas-light & Coke Co., held on February 15, 1902,

Objected to as incompetent, improper, immaterial and not proper rebuttal; because the original is not accounted for and for the further reason that it is, as appears upon the face of it, purely an attempt to manufacture evidence to assist the complainant in this case.

The MASTER: The same ruling as before.

Whereupon the said certified copies of the proceedings of the board of directors of the Peoria Gas-light & Coke Company, held on October 2, 1901, October 21, 1901, and February 15, 1902, so offered and admitted in evidence were marked respectively Exhibits "40, 41 & 42" and were read to the master in the words and figures following, to-wit:—

1987 *Special Meeting of the Board of Directors of the Peoria Gas Light & Coke Company.*

Special meeting of the board of directors of the Peoria Gas Light & Coke Co., convened at the office of the company, in the city of Peoria, Illinois, on the 2nd day of October, A. D. 1901, at the hour of 9.30 o'clock a. m., at the call of the president.

Present: Abbott, Chubbuck, Johnson and McKinley,

The meeting was called to order by the president, who stated the object of the meeting to be to consider the condition of the gas plant

of the company in the city of Peoria, the repairs and improvements required to be made thereon, in order to continue the supply of gas to its consumers, and in case it may be thought best, to negotiate for the supply of gas required by this company with the Peoria Gas and Electric Co. whose plant is new and said to be of ample capacity to supply all the gas consumed in the city of Peoria.

The president also stated that a large amount of repairs would be required at once in order to continue to manufacture gas in the plant of this company economically and prevent heavy leakage and waste.

After a general discussion of the condition of the plant, the cost of repairs and renewals required to manufacture gas to deliver the same to its consumers economically, Mr. Chubbuck offered the following resolution, which on motion, duly seconded, was adopted by the unanimous vote of the board present, viz:—

Resolved: That the president be, and he is hereby authorized and instructed to negotiate with the Peoria Gas & Electric Co. for a sufficient amount of gas to supply the consumers of this company, and report his actions in that behalf to this board at an ad-
1988 journment of this meeting, to be convened at the call of the president as soon as such negotiations may be had, for the further consideration of this board—and

Be it further resolved, That all contracts for material and repairs toward the repair and renewal of the plant of this company be withheld until such negotiations with the Peoria Gas & Electric Co. may be concluded.

There being no further business before the meeting on motion the same adjourned to meet at the call of the president.

W. B. McKINLEY, *President.*

W. T. ABBOTT, *Secretary.*

STATE OF ILLINOIS, } ss:
Peoria County, }

I, W. T. Abbott do hereby certify that I am secretary of the Peoria Gas Light & Coke Company and keeper of its records; that the annexed and foregoing is a true copy of the records of a special meeting of the board of directors of the said company, held October 2nd, A. D. 1901, of which it purports to be a copy, as the same appears upon the records of said company.

Witness my hand and the seal of said company, this 17th day of September, A. D. 1902.

W. T. ABBOTT,
Secretary of the Peoria Gas Light and Coke Company.

[CORPORATE SEAL.]

1989 *Special Meeting of the Board of Directors of the Peoria Gas Light & Coke Co.*

Special meeting of the board of directors of the Peoria Gas Light & Coke Company held at the office of said comapny in the city of Peoria, Illinois, on the 21st day of October, A. D. 1901.

Present: Abbott, Stevens, McKinley and Johnson.

The meeting being called to order by the president, the secretary was instructed to read the minutes of the last preceding meeting, which on motion were duly approved.

The president then stated that he had sent a communication to the Peoria Gas & Electric Company as directed at the last preceding meeting of this board requesting said company to make a proposition to this company for the furnishing of a sufficient amount of gas to supply its consumers throughout the city of Peoria and adjoining territory, and that he had received a proposition for the consideration of the board which was in the hands of the secretary and that the secretary would now read the same which is as follows:

That the Peoria Gas and Electric Company will manufacture and furnish to your company a sufficient amount of gas to supply your consumers and customers upon substantially the following terms and conditions:

First. That the Peoria Gas & Electric Company will furnish to the Peoria Gas Light & Coke Co. a sufficient amount of gas of good quality, to supply its consumers in the city of Peoria, Illinois, at the rate of seventy-five cents per thousand cubic feet.

1990 Second. That all leakage or loss of gas between meter in the gas plant of said Peoria Gas Light & Coke Co. in said city and the delivering thereof to the several consumers of said Peoria Gas Light & Coke Co. shall be accounted and paid for at trate of fifty cents per thousand cubic feet of gas so furnished.

Third. That the amount of gas so furnished to be paid for at the different rates above designated shall be determined by the difference between the amount as shown by the station meter in the gas plant and the amount registered by the several meters set for consumers by the Peoria Gas Light & Coke Co. throughout said city of Peoria, and the Peoria Gas & Electric Company its officers and employés shall at all times have free access to the plant and premises of the Peoria Gas Light & Coke Co., to examine said station meter and shall also have the right to read and take the measure of all meters set to private consumers throughout said city of Peoria.

Fourth. That the Peoria Gas & Electric Company shall have the right to enter upon the premises of the Peoria Gas Light & Coke Co. and lay all necessary pipes and make all necessary connections with the meters and gas mains of the Peoria Gas Light & Coke Co. in its plant in the city of Peoria.

Fifth. That any contract entered into for the furnishing of gas above provided shall be for a term of not less than ten years.

Sixth. That settlement for all gas furnished shall be made monthly on or before the 15th day of the month following that for which gas may have been furnished as above.

Seventh. That the Peoria Gas & Electric Company shall have full charge during the term of any such contract of all meters set
1991 by the Peoria Gas Light & Coke Co., for the measurement of gas to its consumers, and shall have the right to make such repairs and changes from time to time as may be necessary to secure a proper measurement of any gas so furnished; and shall also have the right to make any repairs or improvements to any main, gas or service pipes owned by your company, to prevent unnecessary waste or leakage of gas, such repairs and improvements to be at the expense of the said Peoria Gas Light & Coke Company and to be made at cost.

After a general discussion of the proposition submitted by the Peoria Gas & Electric Company, Mr. Stevens offered the following resolution:—

Resolved, That this company hereby accept the proposition of the Peoria Gas & Electric Co. for the furnishing of gas to this company with which to supply its consumers and customers, and that the president be, and he is hereby authorized and instructed to enter into a contract with said Peoria Gas & Electric Company in the name of this company duly attested with its seal, for such supply of gas for a period not exceeding ten (10) years upon the terms and conditions in said proposition named, placed in proper contract form, with such additional recitals as will properly protect the interests of each respective company.

On motion, duly seconded, the president stated that the question was upon the adoption of the resolution as read, and the same receiving the unanimous vote of all the board present was declared duly adopted.

There being no further business before the board, on motion, the same adjourned.

W. B. McKINLEY, *President.*

W. T. ABBOTT, *Secretary.*

1992 STATE OF ILLINOIS, } ss:
Peoria County, }

I, W. T. Abbott, do hereby certify that I am secretary of the Peoria Gas Light & Coke Comapny and keeper of its records; that the annexed and foregoing is a true copy of the records of a special meeting of the board of directors of the said company, held October 21st, A. D. 1901, of which it purports to be a copy, as the same appears upon the records of said company.

Witness my hand and the seal of said company, this 17th day of September, A. D. 1902.

[CORPORATE SEAL.] W. T. ABBOTT,
Secretary of the Peoria Gas Light & Coke Company.

1993 *Special Meeting of the Board of Directors.*

PEORIA, ILLS., *Feb'y 15th* 1902.

A special meeting of the board of directors of the Peoria Gas Light & Coke Co. was held at the office of the company, in the city of Peoria, February 15th 1902, at the hour of ten o'clock a. m. pursuant to notice duly given by the secretary as provided by the by-laws.

Present: W. B. McKinley, W. L. Johnson, J. S. Stevens, and W. T. Abbott.

The president stated that the object of the meeting was to discuss the question of terminating the contract between this company and the Peoria Gas & Electric Company dated October 21st 1901, as the company was now delivering gas to consumers at a loss; and that it was desirable to terminate the said contract.

On motion of J. S. Stevens, duly seconded, the following resolution was adopted by unanimous vote:—

Whereas this company has been purchasing gas from the Peoria Gas & Electric Company at the rate of seventy-five cents per thousand cubic feet under the terms of a certain contract—dated October 21st, 1901, and

Whereas, it appears from the statement of the business of this company, that this company is delivering such gas to its consumers at a loss, by reason of the expense of the delivery of the same, and the operation of its office, etc.; and

Whereas, under the terms of said contract, the same may be terminated on six (6) months' notice upon the conditions therein expressed;

1994 Therefore, resolved: That the president of this company be, and he is hereby authorized and directed to take such steps as may be necessary to place the plant of this company in good repair, and that he notify the Peoria Gas & Electric Company, forthwith, that this company will terminate the said contract of October 21st, 1901, under the terms thereof, at the expiration of six (6) months from the date of the notice.

There being no further business, the meeting then adjourned.

W. B. McKINLEY, *President.*

W. T. ABBOTT, *Secretary.*

STATE OF ILLINOIS, } ss:
Peoria County, }

I, W. T. Abbott, do hereby certify that I am secretary of the Peoria Gas Light & Coke Company and keeper of its records; that the annexed and the foregoing is a true copy of the records of the special meeting of the board of directors of the said company, held February 15th, 1902, of which it purports to be a copy, as the same appears upon the records of said company.

Witness my hand and the seal of said company, this 17th day of September, A. D. 1902.

[CORPORATE SEAL.] W. T. ABBOTT,
Secretary of the Peoria Gas Light & Coke Company.

1995 19. Are you familiar with the business transactions between the complainant company and the Peoria Gas-light & Coke Co., under the contract referred to marked Exhibit "32"?

Ans. I am.

20. Can you tell the amount of gas furnished by the complainant company to the Peoria Gas-light & Coke Co., under the contract Exhibit "32"?

Objected to as incompetent and improper, the books of the company being the best evidence of what was actually done.

The MASTER: The witness may answer subject to the objection.

A. I can.

21. State if you please?

Objected to same grounds as before.

A. In round numbers one hundred and four million feet in the ten months of operation under that company.

22. State whether that contract was terminated in pursuance of the proceedings of the board of directors of the Peoria Gas-light & Coke Co., held on the 15th, day of February 1902?

Objected to as incompetent, improper and immaterial, the record being the best evidence of that.

A. It was.

23. About what date?

Objected to same grounds as before.

A. August 19, 1902—the night of August 19, 1902; the operation of the manufacturing plant of the Peoria Gas-light & Coke Co., being resumed on August 20, 1902.

24. Can you tell what amount of money was paid to the complainant company by the Peoria Gas-light & Coke Co., for gas furnished under the contract Exhibit "32," during the period the same was in force?

Objected to same grounds as before.

The MASTER: If he knows of his own knowledge he may state; he may answer subject to the objection.

1996 A. I can.

25. How much?

Ans. $76.654.87.

26. Can you state the amount of gas that was settled for by the Peoria Gas-light & Coke Company and paid to the complainant under the contract marked Exhibit "32"? at the rate of 75c. per thousand cubic feet as named in that contract?

Objected to as incompetent, improper, immaterial, not the best evidence and not proper rebuttal.

The MASTER: The witness may answer subject to the objection.

A. I can.

27. What amount was settled for in that way?

Objected to same grounds; same ruling by master.

A. In round number 94,400.000 cubic feet.

28. Can you tell the amount of unaccounted for gas that was settled for at the rate of fifty cents per thousand cubic feet as named in the contract Exhibit "32"?

Objected to same grounds; same ruling by master.

A. I can.

29. Will you please state?

A. Ten million and some odd thousand cubic feet.

29. Can you tell what was the cost of the distribution of the gas so purchased from the complainant during the existence of the contract marked Exhibit "32"?

Objected to same grounds as before.

The MASTER: I do not think it competent, gentlemen.

Mr. IRWIN: It simply goes to one of the particular features of this case as to what was the cost of the distribution of gas; the defendant has put in evidence as to what it would cost to distribute that amount of gas.

The MASTER: That is a matter in chief and besides it appears in this record the complainant company was to no expense as

1997 to the cost of the distribution of the gas.

Mr. MANSFIELD: All the expense of distribution was paid for by the Peoria Gas-light & Coke Company.

Mr. IRWIN: No, the only thing shown in the record is this; they took the amount of gas manufactured by complainant company and then proved what the cost would be to distribute that gas through 26½ miles of mains and 1758 meters. Now, anything we can show in rebuttal of that to show what it did cost to distribute that amount of gas is proper rebuttal on that testimony.

Mr. TICHENOR: We take the position that it is immaterial in this

case what cost or expense the Peoria Gas-light & Coke Co. may have incurred on account of distributing the gas, or what anybody else or any other corporation may incur; the question is, what the complainant company has incurred; those other matters are entirely immaterial in this inquiry.

Mr. IRWIN: The master can readily see from the testimony in the record as it now stands that it would give any court or any individual, that does not know the facts, a wrong impression; the testimony of the experts put on the stand by the defendant figured upon a false hypothesis; they charged up the expense of distribution of all of that gas that was manufactured to 26½ miles of mains and 1758 meters, the number of miles of mains and the number of meters the record at that time showed complainant had, and on cross-examination we asked them as to the average amount of gas used per meter throughout the country and if the amount they stated were charged up to this particular number of meters it would amount to over 100,000 feet a year to each consumer; the leakage was also charged up to that length of mains in stating what that amount of gas could be manufactured and delivered for in the city of Peoria.

Mr. TICHENOR: Our testimony was based on the fact as it actually existed there. Now, if under the conditions existing the
1998 Peoria Gas & Electric Company can manufacture and distribute gas at a less rate than can be done anywhere else in the country, we are entitled to the benefit of it; the condition is one they themselves created and we took it exactly as it exists; they reported their own meters in action and all the other details upon which the estimates of our experts were based.

Mr. IRWIN: We want to show the facts as they actually existed there; we propose to show this gas, instead of being distributed through 26½ miles of pipe was distributed, as a matter of fact, through nearly 80 miles of pipe and through 7000 meters instead of 1758 meters; we further propose to show that if we were delivering that amount of gas to ordinary consumers we would have to double our main system in extent and cost and more than multiply the number of our meters by three.

Mr. TICHENOR: That merely involves a trial of the other case with this one; I think we are entitled to have the testimony taken separately and it is an entirely immaterial matter what is done with that gas after it is delivered by complainant company or what expenses are attached to the distribution of it; complainant company had nothing to do with those expenses whatever.

Mr. IRWIN: The master will remember that we protested against going into the matter of the gas furnished the old company at all, we taking the position at the time, as the master will remember, that the testimony was incompetent, it being an abnormal condition and a matter with which the public had no concern, but the master and court both held the defendant had a right to go into the whole matter and the master has asked us to furnish statements concern-

ing the facts; as soon as the court decided that question we produced the contract between the companies and the contract is in evidence and I think we have a right to go into all the facts pertaining to that contract and the cost of the distribution of that amount of gas.

The MASTER: I do not think the testimony admissible and
1999 the master will adhere to his ruling.

Mr. IRWIN: We do not agree with the master and must insist on the question being answered until the court finally determines it.

The MASTER: If you desire to press the question the witness may answer subject to the objection.

Mr. IRWIN: We do.

A. I can.

30. Will you please state the cost of the distribution of the gas so purchased from the complainant company by the Peoria Gas-light & Coke Co., under the contract Exhibit "32" during the period the same was in force between said companies giving in detail the cost if you can?

Objected to as incompetent, improper, immaterial, not the best evidence and not proper in rebuttal.

The MASTER: The ruling will be the same; the witness may answer subject to the objection.

A. The total cost of the distribution for the 10 months of operation from November 1, 1901, to September 1, 1902, was $66.754.00 or 70 6/10ths, cents per thousand cubic feet of gas sold. That is made up of the following items:—First, salaries of men in the office clerical salaries $5166.66; second, repairs of mains and service pipes $2375.53; reading of meters etc., $1159.31; repairs of meters and setting meters $1973.04; labor and setting of gas stoves $1725.36; taxes for the 10 months $7621.04; insurance $299.25; advertising $1462.60; office expenses, which includes rental of telephone $1730.24; legal expenses, loss and damages $2578.77; incidentals $179.24, making the total of those items $26.291.04.

The other items included in the total I gave are as follows: Officers' salaries, taking one-half of the officers' salaries as charg-able to distribution, for the 10 months $3750; leakage $5000; depreciation, figured for the same period at the rate of 6% per annum
2000 or 5 % for the 10 months, $29.000; expense of resetting the retorts and minor repairs and putting them in operation, which is charged on the basis of 10/24ths, of the total expense of that renewal is $2713.00, making the total, disregarding cents, of $66.754.00. Those figures, reduced to cents on a thousand cubic feet of gas sold, would be, on the first list of items I gave in total 27 8/10ths, cents; on officers' salaries 4c.; on leakage 5c.; on depreciation 31c.; and on the proportion of the repairs, or resetting of retorts there would be over the ten months 2 8/10ths, cents, mak-

ing the total cost of depreciation per thousand cubic feet of gas sold 70 6/10ths, cents.

31. On what basis did you figure the depreciation in the figures just given in your examination as to the cost of the delivery of the gas sold by the complainant company to the Peoria Gas-light & Coke Company under the contract] Exhibit "32"?

Objected to same grounds as before and also because no proper foundation has been laid.

The MASTER: The ruling will be the same.

A. On the construction account of the company as appears from its books and substantially as it appears in the evidence of the witness Mathew Henebery.

32. How does the cost of the plant as appears from the books you refer to compare with the value of the plant as stated by the witness Henebery?

Objected to same grounds as before. Same ruling.

A. Mr. Henebery's statement was that the total investment would run up close to $600.000; the construction account, as carried on the books of the company, shows $580.000, and it was on the latter figure that I estimated the depreciation.

33. Have you made a computation as to the results of the operation under contract marked Exhibit "32" so far as they pertain to the business of the Peoria Gas-light & Coke Company?

Objected to as incompetent, improper, immaterial, not
2001 proper rebuttal, and because the witness has not qualified himself to answer. (Same ruling)

A. The amount received by the company for gas sold was $94.802.80; the amount paid to the Peoria Gas & Electric Company for gas purchased from it was $76.654.87; the cost of distributing the same, including only the items which I first mentioned as clerical salaries, repairs of mains and services, cost of reading meters etc., repairs of meters and setting same, labor and setting in connection with gas stoves, taxes, insurance, advertising, office expenses legal and loss and damage and incidental, which amount in the aggregate to $26.291.04, makes the total of those items of $102.945.91, which as against the income of the company for the same period shows a net loss to the company for those ten months of $8143.11, not including anything for officers' salaries, or any other element of the distribution expenses except those I have above enumerated.

34. Did that expense include anything allowed for depreciation, or interest on the investment?

A. Nothing for either of those items.

Cross-interrogatories by Mr. TICHENOR:

1. State whether or not the Peoria Gas-light & Coke Co., has had an accountant during the period covered by your testimony? If so, who?

Ans. It has; Mr. H. W. Bicknell.

2. Is he a skilled accountant?

Ans. He is.

3. State whether or not the books of account of that company have during all that time been in his exclusive charge and have been taken care of by him?

A. They have been in the office of the company and under his charge.

4. How many, if any, assistants has he had in keeping the accounts proper of the Peoria Gas-light & Coke Company?

A. Mr. Benson assists him to a considerable extent in his personal work.

2002 5. Is Mr. Benson also a bookkeeper?

Ans. He is.

6. What portion of the time, covered by the 10 months mentioned in your testimony, have you actually spent in that company's office?

A. It would be difficult to say; probably 2 or 3 times a week, varying from half an hour to an hour and a half or two hours.

7. What has been your business during the time in question?

A. I have been a practicing attorney engaged in general practice in the city of Peoria.

8. What is the name of the firm with which you have been associated during all that time?

Ans. Stevens, Horton & Abbott.

9. Is Mr. Stevens, a member of that firm, the same Mr. Stevens mentioned in the record of the proceedings of the board of directors of that company?

Ans. He is.

10. You and Mr. Stevens are both stock holders of that company, are you not?

Ans. Yes sir.

11. And have been for a number of years?

A. I don't know how long Mr. Stevens has been a stock holder; I have not been a stock holder for a very long period; I became a stock holder just prior to my election as secretary and director.

12. Did you become a stockholder for the express purpose of associating yourself with the company in that official capacity?

A. I was requested to become associated with the company in that way.

13. What, if any, work have you performed in the accounting of the company within the period covered by your testimony?

A. I should say that up to the beginning of this period of unusual operation my duties were entirely those relating to the company as a corporation, but during this period of 10 months' operation

2003 I have aimed to make myself thoroughly familiar with the details of the distribution and business as conducted during that time.

14. Did you do that for the purpose of testifying in this case?

Ans. Not entirely.

15. But in part you did, did you not?

A. Well, no, I would not say it was for the purpose of testifying in this case; it was for the purpose of thoroughly acquainting myself with the business with a view to preparation for the trial of the case of the Peoria Gas Light & Coke Company which is still pending.

16. What experience, if any, have you had in technical book-keeping?

A. I have had none in such systems of book-keeping as are there employed; my experience has been confined to simple book-keeping.

17. Is it not true that the basis for your testimony with reference to figures, concerning which you have testified, came from coursory examination of the book and through conversations with Mr. Bicknell, the accountant?

A. No, that is not wholly true, for this reason. The facts which I have testified to I have derived more largely from the vouchers themselves than from the books or conversation with Mr. Bicknell. Under the system of book-keeping which is practiced by the Peoria Gas Light & Coke Company the voucher itself is the foundation of all the subsequent book-keeping and the voucher has enclosed in it the bill for which the voucher evidences payment, the signature of the payee and upon the back of it, before any entry is made upon the books at all, the distribution of the different items to the proper account is made, so that an inspection of the vouchers for a given month show directly and in the first instance the expenses
2004 for that month without any reference to the books, but I have consulted the books, also, and am familiar with the manner in which the items in the various vouchers are distributed on the books.

18. Then your knowledge of the financial results for the period concerning which you have testified is based entirely upon work done by others, is it not, and as to the correctness of which you have no personal knowledge?

A. I have no knowledge of the actual delivery of any of the material or any of the items of the bills in these vouchers; I only know that the vouchers bear the receipt of the parties furnishing such items; of course the work of distributing those items on the book is done by others.

19. You have no personal knowledge of the amount of gas received from the Peoria Gas & Electric Company, have you?

A. I have that only from the record in the case and the records kept by the Peoria Gas Light & Coke Company.

20. The record in this case does not show the delivery for 10 months, commencing with November 1st, 1901, does it?

A. No, I think not exactly.

21. The examination commenced with October 26, 1901, and ended with May 5, 1902, did it not?

A. I have forgotten at this moment the last date.

22. And for all of your information pertaining to this question, you have depended on others, and the testimony you have given simply includes summaries obtained in that way or made up by you from information obtained in that way?

A. Summaries made up by me from the original books.

23. But as to whether those vouchers or the accounts are correct, you don't know?

A. As I have before stated, I simply know that those bills were paid; I could not, of course, say that I am familiar with the
2005 proper cost of any considerable number of those items.

24. During that period, did the book-keeper furnish or take off a trial balance monthly or otherwise?

A. I suppose he did, I know he did at times; I didn't see it always.

25. Did you ever go into the details of those trial balances for the purpose of ascertaining whether or not his work was correct?

Ans. No.

26. What personal knowledge have you that the vouchers, to which you have referred, were in fact signed by the people by whom they purport to be signed?

A. I know the signature- of a great many of them but there are some I don't know.

27. When did you for the first time learn that there was an intention of negotiating with complainant company for the purpose of obtaining from it your gas supply?

A. I could not say whether it was the morning of the day on which that special meeting of October 2, 1901, was held or the day before; as I recollect it, Mr. McKinley called that meeting and told me the purpose of the meeting before it was held but whether it was on that morning or the day before I would not be sure.

28. Does the record, to which you have referred, correctly show the time of the passage of the resolution accepting complainant company's proposition to furnish gas as of October 21st, 1901?

A. To the best of my recollection it does.

29. Prior to that time, was there any authority from the board of directors, directly or impliedly, to enter into any contract of that character with complainant company to your knowledge?

A. I don't think the matter had ever been discussed until Mr. McKinley came to Peoria at that time, that is, among the
2006 directors as a body; Mr. McKinley may have consulted with some of the other directors.

30. But if there was anything of that kind, you had no knowledge, whatever, of it?

Ans. No.

31. Do you remember the date on which that contract became operative?

A. I do not but it was some d-ys, I think, after the 24th of October.

32. Let me refresh your recollection by asking you if it was not the 26th of October?

A. It may be, I will not be sure about that.

33. The Peoria Gas Light & Coke Company's plant shut down not later than the 26th of October, 1901?

Ans. Yes sir.

34. And from that date and after all of its gas supply was furnished by the Peoria Gas & Electric Company?

Ans. Yes sir.

35. When was the pipe system, connecting the two companies' plants for furnishing that gas, put in?

A. I have no personal knowledge of that; I think it appears in the evidence of Mr. Robb; I don't know aside from that.

36. Was it put in to the best of your knowledge between the 21st of October and the morning of the 26th of October?

A. I know this that it was not put in until after the contract was made.

37. But it was put in during those five days, you think?

A. Yes sir.

38. What if anything did you have to do with installing that connection?

A. Nothing; as I said before, I know nothing about that except from the testimony of Mr. Robb.

39. Does this resolution of October 21, 1901, contain the only authority ever given by your board of directors with refer-
2007 ence to a contract of the character in question?

A. So far as I know, it does.

40. Can you state by what authority then a provision was incorporated in the contract itself providing for cancellation upon giving certain notice?

A. Yes sir, that was done under the following clause in said contract, "Upon the terms and conditions in said proposition named placed in proper contract for with such additional recitals as will properly protect the interest of each respective company," as the proposed arrangement was largely experimental to enable the company to determine by that experiment whether it would be better to purchase its gas of the Peoria Gas & Electric Company or at some future time restore its plant to working condition and again resume the manufacture of gas, that provision was inserted when the contract was drawn up a few hours later in the day, as I recollect it, of the day the meeting was held; that was the reason from the standpoint of the Peoria Gas Light & Coke Company why the provision was inserted; there may have been reasons from the stand point of the other company of which I h-ve no knowledge.

41. To what extent were the people then in control of the Peoria Gas Light and Coke Co. skilled in the gas industries?

A. Mr. McKinley is interested in other gas properties and at that time the works were in charge of a competent foreman; I do not now recollect just who was in charge at that time.

42. Is the foreman to whom you refer the same person elsewhere in the record characterized as the superintendent?

A. I mean that person.

43. That was Mr. Eustace, was it not?

A. Now that you recall it to my mind, I think it was Mr. Eustace.

44. Was Mr. McKinley interested in other gas properties in

2008 the State of Illinois?

A. I don't know where his other interests are.

44. How long have you known Mr. McKinley as a gas man?

A. Well, I could not say as to that, because I have only known Mr. McKinley some 5 or 6 months; Mr. McKinley, and those associated with him, acquired control of the property at a time when I was away from Peoria, and I did not meet him, I think, until the month of January, 1901.

45. Who, if anyone, acted as consulting engineer for your company prior to the entering into the contract in question?

A. I do not think there was any; Mr. Eustace performed such duties as ordinarily pertain to that position.

46. Do you know whether or not Mr. Eustace was skilled in the gas business to the extent of having definite and technical knowledge of the cost of construction, maintenance, manufacture, etc.?

A. I know nothing of Mr. Eustace's skill or experience except so far as appears from the record in this case.

47. Did the company at that time have any other adviser in gas matters?

Ans. I don't think they did.

48. With whom did you, as an officer of that company, come in contact in making the contract in question?

A. With Mr. McKinley prior to the meeting and with Mr. McKinley and the other directors who were present at the meeting.

49. With whom representing the complainant company?

A. I had nothing to do with the negotiations with the other company.

50. What knowledge or information did you and the other directors of your company have at that time respecting the fairness or unfairness of the price for gas provided for in that contract?

A. I could not answer for the other directors; for myself I trusted to Mr. McKinley as the executive head of the company to

2009 make such arrangements as he deemed advisable.

51. In connection with the negotiations which resulted in the making of that contract, who took the initiative in suggesting prices?

A. I don't remember; my recollection is that matter was almost entirely in charge of Mr. McKinley.

52. Is it not true that the first indication of what that price would be came from complainant company as referred to in the record of your meeting of October 21, 1901?

A. No, I could not say that.

53. Could you say it is not so?

A. I could say it was not so, so far as I have any knowledge.

54. Is it not also true that all of the planning and preparation and preliminary arrangements were prepared in the office of the complainant company and simply turned over to your company as a matter of form and ceremony to be acted on by the board?

A. No sir, I do not think that is true; (there was ample opportunity between the second day of October and the 21st of October for any amount of negotiation back and forth between the representatives of the respective companies, but what that was I have no knowledge.)

Defendant's counsel object- to that part of the foregoing answer enclosed in brackets as not responsive to the question, being the conclusion of the witness and improper, and moves the court to exclude it.

55. Is it not true that aside from Mr. Little, there was no man representing either company that claimed to have any special knowledge regarding the expense of operating a gas plant, taking in all its details from the commencement of the manufacture to the final delivery of the product?

A. No, I do not think that is true; Mr. McKinley had knowledge of those matters and Mr. Chubbuck also had some
2010 knowledge of the gas business.

56. You are the same gentleman, are you not, whose name appears in the record of this case as examining a number of the witnesses either in chief or in cross examination?

A. Yes sir.

57. And with one or two minor exceptions you have attended all of the sittings of the special commissioner when testimony in the case has been taken since the time you say you first became associated in the case?

A. Yes sir. (I would like to add to my answer that my original connection with the case was, as stated in my direct examination this morning, it being the request of Mr. McKinley that I attend the hearing with a view to a better preparation of our own case and my actual participation in the trial of this case has been entirely through the courtesy of counsel.)

Defendant's counsel objects to that part of the foregoing answer enclosed in brackets as not responsive and improper and moves the court to exclude it.

57. One item of expense detailed by you this morning is for legal expense, loss and damages, $2578.77—that includes, as I understand it, any outlay for legal expenses incurred by the company?

Ans. It does.

58. And that includes such compensation as has been paid to you for your services in this case at least up to the time those figures were closed?

Ans. Yes sir.

59. What other items enter into the aggregate figures stated other than payments made on account of legal services?

A. There are some other items but I do not recall now just what they are; a considerable portion of that, however, is for legal expenses in connection with my services in this case; there has been settlements of some losses on accidents, however, and it ex-

2011 cludes as well the services of our firm as counsel for the company in other matters not relating to this case.

(The MASTER:)

60. Do you mean your regular retainer?

A. Regular retainer.

(Mr. TICHENOR:)

61. What figure did you use as a basis of your estimate for depreciation on the plant?

A. $580,000.

62. Where did you get that?

A. From the construction account of the company.

63. Do you know anything about its correctness?

A. I do not except so far as it is verified by a witness for the defendant, Mr. Henebery.

64. Did he testify the plant had cost them that?

A. His testimony was that it would run close to $600,000. That was his testimony in one place in the record and in another place he said it was between $500,000. and $600,000.

65. That included also all betterments and improvements that had been incorporated in the plant including substitutions from the time he became connected with it in the 60's up to the ultimate disposition of his interests in the company, did it not?

A. Certainly, it was the plant as it stood at that latter date.

66. From what source did you get your estimate of the 6 per cent. depreciation?

A. From the record in this case, from a large preponderance of the witnesses.

67. You have no personal knowledge of that?

A. No, I have no expert knowledge of the business outside of what I have acquired in the trial of this case.

68. You applied that to the $580,000. did you?

A. Yes sir.

2012 69. During what portion of that 10 months was the manufacturing plant of the Peoria Gas Light & Coke Company in operation?

A. None at all except the last few days of August which were not considered.

70. Would the depreciation of the plant be just the same when standing idle as it would if in operation?

A. As a non-expert in the gas business, from my own knowledge

only, I should say a property of that kind would depreciate more during a period when it was not in use than it would when it was in actual operation.

71. Is it not true that your own witnesses testified that the largest element in causing depreciation about a plant is the presence of gases, sulphurous fumes, etc., arising from the manufacture?

A. That would be true of the retort house, and that element of depreciation was, of course, wanting during this 10 months of operation, but my judgment of it is that other elements would be there increasing it, if anything.

72. Would the engine, exhauster and connections, steam boilers, washers, purifyers, and all apparatus of that character depreciate the same when idle as when in operation?

A. The extent of it would, of coyrse, depend on the care taken of it; I do not wish to be understood as saying this would continue to be true for any indefinite length of time.

73. There would be no depreciation in the stack proper would there, standing idle?

Ans. You mean the stack of benches?

74. Yes sir, the destruction of those comes from the intense heat in operation?

A. Do you mean the depreciation of this particular stack or in general?

2013 75. This particular stack?

A. This particular stack was so worn out as to be useless on November 1, 1901, and as it had to be rebuilt entirely before the manufacturing operations could be resumed, it is hard to say what the depreciation would be under that state of facts.

76. What life did your witnesses place upon a stack?

A. I don't remember.

77. It was 20 or 25 years, was it not?

A. I have not it in mind at all.

78. Don't you remember the fact that this stack was just completed before the old company changed hands?

A. The record shows that it is true and in that 2 years the retorts had gone all to pieces.

79. You are speaking now of the clay retorts and not of the stack proper—you do not mean to say that the stack itself had gone to pieces?

A. No, certainly not.

90. The record shows the life of retorts to be about 2 years on the average?

Ans. That is the average of the testimony I believe.

91. Is it not true that substantially all of your knowledge upon the subjects covered by your testimony this morning comes from what others have told you and from a very cursory examination of accounts without going into that detail which would give you a skilled knowledge of any of those subjects?

A. I have already answered that as best I could, that my knowl-

edge comes from a personal inspection and not a cursory one of the original vouchers and from all that has been told me in explanation of the system under which the items in the various vouchers are transferred to the company's books prior to posting them into the ledger account.

2014 92. Is it not true that the only way by which you or anybody else could ascertain the correctness or incorrectness of all of that material pertaining to the accounting would be by having it carefully checked by an expert from the beginning to end or by doing it yourself provided you had sufficient expert knowledge—is there any other manner in which definite personal knowledge upon any question could be obtained?

A. I should consider that the examination which I have given to the accounts together with the fact that these are bills rendered and paid in the usual course of business would give me as good a knowledge on that subject as one could acquire unless he personally inspected and checked every item that came into the works or office and knew of his own personal knowledge of the cost thereof.

Mr. TICHENOR: Defendant now moves to exclude from the record all the testimony of this witness so far as it is based upon a counting in of the expenditures, outlays or disbursements of the company during the 10 months concerning which the witness has testified as incompetent, no proper foundation for the testimony having been laid, and improper; and by way of elaboration I desire to support my motion by a suggestion, already perhaps sufficiently intimated in the examination, that no one except a person who has actually kept the accounts or who has sufficient knowledge of accounting to examine them fully and arrive at his own conclusions could possibly be qualified to testify and then could only testify as to what the books themselves show and not as to whether they are correct or not, the books themselves being the best evidence of their contents.

Adjourned until Wednesday, September 24, 1902, at 10 a. m.

2015 Directors' room, Equitable Trust Co., National Bank building.

CHICAGO, ILL., WEDNESDAY, *Sept.* 24, 1902—10 a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin, Mr. R. C. Ritcher and Mr. W. T. Abbott, appearing for complainant. Mr. Henry Mansfield, city attorney, and Mr. F. H. Tichenor appearing for defendants.

Mr. ABBOTT: At a former hearing, when I was not present, some questions were asked with reference to a schedule of rates of the Peoria Gas Light & Coke Company, and some stipulation was made at that time with reference to its introduction. I have had prepared a statement of those rates from the year 1876 to the present

time which is a correct transcript from the books of the company, but so far as I know there is no person in existence who is able to vouch for the correctness of the entries in the books. This paper is a correct transcript from the books and if counsel for defendant cares to have this statement go in evidence under the stipulation which has been made, we have no objection.

Mr. TICHENOR: We will examine the statement and indicate what we desire in the matter.

DONALD MCDONALD, called on behalf of complainant, being first duly sworn, deposes and says:

Direct interrogatories by Mr. ABBOTT:

1. State your name and residence?

A. Donald McDonald; Louisville, Ky.

2. Are you the same Donald McDonald who has testified for complainant in this case at a former hearing?

Ans. I am.

2016 3. State whether or not you have read the testimony of Frederick Egner and Thomas Littlehales given in this case?

A. I read the testimony yesterday.

4. Are you familiar in a general way with the manufacturing plant of the Peoria Gas & Electric Company?

Ans. Yes sir, I examined it carefully prior to my former testimony.

5. State what necessary items of expense, in your judgment as a practical gas man, if any, were omitted by the witness, Frederick Egner, in his estimate of the cost of the distribution of gas in the city of Peoria, as shown by his testimony in the record of this case?

Objected to as incompetent, improper, immaterial, not the proper method of reaching a question of that character, and further objected to because it leads to the conclusion of the witness with reference to the testimony in question and his interpretation of what the witness had to say on that subject.

The MASTER: The witness may answer subject to the objection.

A. Mr. Egner included nothing for meter readers; as a matter of fact, it will take 28 days' work out of each month to read the 7,000 meters which I understand is the number to be read, and that will cost $672. a year; he included nothing for accident insurance and I think that would cost about $250. a year; he included nothing for complaint men and I think it would require as many as four men at $60. a month and part of their duty would be to answer fire alarms and turn off gas—that would amount to $2880. a year; I saw no estimate of his for meter repairers, which would take a man at about $70. a month and 2 helpers at about $45. per month, which would come to $1900. a year; it is not possible for one horse and

wagon to attend to the amount of business that number of meters and mileage of mains would make, so I have figured for another
2017 horse and wagon $240., and the driver for this wagon and a driver for the other wagon, Mr. Egner put in his estimate, would amount to $1080 a year for the two drivers, unless the city was of such a character that a bicycle could be used and a man could be found young enough to ride — bicycle; it would be necessary for the superintendent of distribution to have a buggy, for he could not get over that mileage of mains as often as he should without a buggy, and I have figured the cost of keeping that buggy at $240. a year—it would not need a driver; Mr. Egner has nothing in his estimate for legal expenses, loss and damage to persons and property; my opinion is that would cost on the average $4,000. a year—I mean people who are hurt and property that is damaged that a company must make good or else stand a lawsuit about it; Mr. Egner has no estimate for a stenographer; without a stenographer the manager would spend two thirds of every winter day answering letters of complaint about bills and services—I think a stenographer absolutely necessary to a gas company of that size, and it would take $720. a year to pay one; there is nothing included in Mr. Egner's estimate for a store keeper; one is necessary and it would cost $720. a year; there is nothing included for a superintendent of distribution; every gas company of any size must have one and $1200. a year would be a reasonable price for one; there is nothing included in his estimate for a crop of complaints—I will call them—that come every year from frost in the winter and nap-thaline in the spring and fall; an average of 10 men employed for 2 months would be a fair estimate for attending to that character of complaint and would cost about $1000. a year; the wear and tear on the horses and wagons, that is, a horse that cost $120. this year has to be sold for $40. three or four years hence—that would amount to about $180. a year; the hunting of leaks and repairing of mains and services, which has to be done every year, will require a foreman and
2018 a gang of about 5 men for about 5 months out of a year and I have figured $2730. as the cost of that; those supplies that are needed by these various gangs would come to about $50. a month during the 8 months they are employed, amounting to $400. a year; There is always a loss due to bad bills—I do not only mean bills not paid at all but bills from which deductions must be made before they are paid; I think one per cent. on the receipts would be a fair estimate for that—about $1500. a year; tools for these various gangs I estimate at $500. a year; these items make a total of $20,232. which must be added to Mr. Egner's estimate in arriving at the cost of the distribution of gas.

6. Have you computed on that basis what that would increase the cost of distribution per thousand cubic feet of gas on a distribution as assumed in interrogatories propounded to the witness Enger and, if so, how much is it?

Objected to same grounds as before. Same ruling.

A. It would amount to 12 9/10 cents.

7. What would that make the total cost of distribution on the hypothesis stated to the witness Egner, and assuming that such items as he took into consideration were correctly figured?

Objected to same grounds. Same ruling.

A. I do not remember the amount per thousand which Mr. Egner finally arrived at; he corrected it several times, but taking his figures and totalling them myself I find the total $27,089.85, which on an output of 156,541,000 cubic feet—that is the amount actually sold after deducting the 5 per cent. leakage which he deducted—would give a cost of 17 3/10 cents per thousand feet to which he adds half a cent for purification; 1½ cents for repairs and 1 2/100 cents for incidentals, giving a total of 20.32 cents as the cost
2019 of distribution. To those figures given by Mr. Egner add 12.9 and that would come to 33.1 cents.

8. Do those figures allow anything for depreciation or interest on the investment?

A. Neither his figures or mine allow for those items.

9. State whether or not in your opinion the item of legal expenses in the management of a gas plant is a persistent and regular item of expense even under normal conditions. If you state that it is, explain in what manner?

Objected to same grounds as before and also as not proper rebuttal.

The MASTER: I do not think it is rebuttal at all.

Mr. ABBOTT: It is rebuttal to the extent it is an item omitted by defendants' witnesses in their estimates of the cost of distributing gas, and it is further rebuttal on the grounds of a possible claim that any legal expense incurred in this suit is an unusual expense, and it certainly is proper for us to show by competent evidence in rebuttal, if such be the fact, that the legal expenses of such an organization is a persistent item under usual conditions and why. For those reasons, we respectfully insist on the question.

Mr. IRWIN: And it especially rebuts Mr. Egner's figures as to what would be the cost of distribution.

The MASTER: I do not think it rebuts his figures at all, it being simply a difference of opinion. The witness may answer subject to the objection.

A. I regret to say it is a persistent item; there are some years a gas company will get through without having occasion to consult a lawyer or pay any such charges but there will be a good many more years when the amount paid for such items will run away above the amount I have put it—there is no way of getting
2020 rid of it. A man threatens a suit against your company, you have to defend it or pay up. You have occasion to make a contract for coal and need a lawyer's advice and in the conduct of a business of that size and of that character my opinion is it is impos-

sible to conduct it without being compelled to continually pay expenses under the heading of legal expenses.

10. State if you please what necessary items of expense in your opinion, as a practical gas man, are omitted by the witness Littlehale in his estimate of the cost of the distribution of gas in the city of Peoria, as shown in his testimony in the record in this case, and on the hypothetical case as presented to him.

Objected to as assuming there were such omissions made and also as incompetent, improper, immaterial and leaving to the witness his interpretation of the testimony of the former witness and also because not proper rebuttal.

The MASTER: The witness may answer subject to the objection.

A. I am unable to answer it for the reason Mr. Littlehale made his estimate in cents per thousand feet for each item and I have no way of knowing what items he has included in those cents per thousand cubic feet. The fact is that it will cost a certain gross sum to run a business requiring a given number of meters and having a given mileage of mains and whatever the output happens to be has got to be prorated into that cost in arriving at the cost of distribution. I am not able to check Mr. Littlehale's figures and all I can say is they come to a very much smaller sum per thousand cubic feet than my own knowledge of the absolute necessary expenses of the distribution leads me to think sufficient.

11. State what in your opinion as a practical gas man is the more important element in determining the cost of distribution—whether it is the extent of the output, or the number of miles of pipe and number of meters, and explain your answer?

2021 Objected to as incompetent, improper, immaterial and not proper rebuttal. (Same ruling.)

A. The output has very little to do with it; a meter will require the same attention if it is selling 5,000 feet of gas per month as it would if it were selling 50,000 feet of gas per month; the determining factors are the mileage of mains, the number of meters to be cared for, the character of the streets and yards through which the services are laid; it will cost almost as much to run the distribution department during the summer months as it will during the winter months, yet the output in summer will not be one-third or one-fourth of what it is in the winter; if a competing company comes along and takes away half of your business, you cannot cut down your distribution expenses at all but you prorate them over the gas you distribute, so the cost of distribution would be doubled—I mean by taking away one-half of the business taking away one-half of the output. I want to add if it took away a portion of the meters you would be able to cut down to that extent the expense of distribution.

12. State what the average distribution of gas per mile of main per annum is in cities approximately the size of Peoria and larger?

Objected to same grounds as before.

The MASTER: I think that competent in rebuttal; he may answer.

A. It is about a million per annum per mile.

13. What is the average distribution of gas per annum per meter in cities approximately the size of Peoria?

Objected to same grounds as before.

A. It is about 20,000 feet per annum per meter.

14. State whether from your knowledge and experience as
2022 a practical gas man you would say it is true that the average consumption ever reaches six or seven thousand cubic feet per annum *per capita* in American cities?

Objected to same grounds as before.

A. I would say it did in places like the suburbs of big cities where rich people live where there is only one or two houses to a block and they are very large houses; in any ordinary city or town it would never reach any such average output *per capita*.

15. What is the average consumption *per capita* in America in cities approximately the size of Peoria where no unusual conditions exist either in the way of large manufacturers using gas for fuel or rich suburbs such as you include in your former answer?

Objected to same grounds as before.

A. It will run from 1500 to 2500—2500 would be high—2000 feet per annum per inhabitant is about a fair estimate.

(The MASTER:)

16. Do you mean *per capita* of the entire population within the city or within the district in which distributing mains are laid and gas supplied?

A. I mean in a city on the assumption the gas company will reach all the streets built up well enough to make it pay to lay mains; there will be a certain scattered population in every city which are not reached by mains.

(Mr. ABBOTT:)

16. How many meters in your opinion would be required for the distribution of 160,000,000 feet of gas per annum under usual and ordinary conditions in a city of the size, character and location of Peoria?

Objected to same grounds as before.

A. It would take about 8000 meters.

17. How many miles of mains in your opinion would be required to distribute 160,000,000 cubic feet of gas per annum in a city of the size, character and location of the city of Peoria under
2023 usual and ordinary conditions of gas distribution?

Objected to same grounds as before.

A. About 70 or 80 miles.

18. What provision would need to be made in the ordinary conduct of a business of a gas company in a city of the size, location and character of Peoria to repair and replace pipes and meters assuming a consu-ption of about 160,000,000 cubic feet per annum?

Objected to same grounds as before.

The MASTER: I do not think that rebuttal evidence but the witness may answer subject to the objection.

A. You would have to have a gang of men with a competent foreman to go over the town periodically, driving holes through the street pavements to see where gas will flash and burn, digging up and covering those places and repairing whatever leaks are found; if you fail to do that your leakage account will run so high there would be great loss and you would be apt to have explosions and axphyxiations also which cost a good deal.

19. How many men need to be employed for that purpose and what would be the expense attendant thereon?

Objected to same grounds as before.

A. I figure on a foreman at $3. a day and five men at $2. per day each for 7 months in the year, making a total of $2730. a year.

20. What provision would need to be made for the installation, maintenance and repair of services and mains in a city of the size of Peoria under ordinary conditions, assuming the company would send out 160,000,000 cubic feet per annum?

Objected to same grounds as before.

A. That was included in my last answer.

21. Did you note the amount allowed by the witness Egner for repairs?

2024 Objected to same grounds.

A. 1½ cents per thousand on the amount of gas sold.

22. In your judgment as a practical gas man, how far would that allowance made by the witness Enger go in maintaining the repairs of a gas plant?

Objected to same grounds.

A. It would not begin to cover it.

23. Would it in your judgment cover much more than the necessary repairs on the retorts in view of the rapid deterioration which takes place in them?

Objected to same grounds as before and also as leading and suggestive.

A. It would not.

24. If the amounts as estimated by the witness Egner for repairs were as a matter of fact no more than sufficient to cover the repairs

on retorts you may state whether or not the other items which you have given for repairs and replacements of mains, services and meters are necessary to be taken into consideration in determining the cost of the distribution of gas.

Objected to same grounds as before and also because the witness has fully answered.

The MASTER: I think that has been fully answered but he may answer again.

A. I would consider the expenses I indicate as necessary in addition to the amounts given by Mr. Egner.

25. In the management of the distributing department of a gas company, is it necessary to take into account the maintenance of tools and equipment of that department?

Objected to same grounds.

A. It is absolutely necessary; tools wear out and become lost and you have to replace them.

2025 26. What would you estimate to be the usual and ordinary expenses incident to that department?

Objected to same grounds.

A. I have included in my estimate $500. a year for that item.

27. Assuming that the Peoria Gas & Electric Company is delivering through its own distribution system an average of 20,000 cubic feet of gas per annum per meter and 1,700,000 cubic feet of gas per annum per mile of main, you will please state whether in your opinion as a gas expert the output of the Peoria Gas & Electric Company can be materially increased without additional extension of its main system and additional meters?

Objected to for the same reasons heretofore stated.

The MASTER: He may answer subject to the objection; I don't think it competent as rebutting testimony, however.

A. I would say that in order to get an increased output it would be necessary to lay new services, new mains and provide new meters; you have probably reached the maximum of the output per meter and per mile of main now.

28. Do you know the plant of the Louisville Gas Company in Louisville, Ky.?

Ans. Yes sir.

29. State whether or not that is equipped with inclined retorts?

Objected to same grounds as before.

A. It is equipped with a very fine system of inclined retorts.

30. Is that the system in Louisville equipped with inclined retorts referred to in the testimony of the witness Egner?

Objected to same grounds.

A. Yes sir, it is.

31. Is it the only one there so equipped?

Objected to same grounds.

2026 Ans. Yes sir.

32. State in a general way the location of that company's gas plant in the city of Louisville having special reference to its accessibility for the delivery of coal from the river and the cheap handling of coal and other material?

Objected to same grounds.

A. Their plant is located near the Ohio river and has also a railroad track running into it. In other words, they are well equipped for receiving either river coal or railroad coal.

33. What effect would that location have on the cost of coal delivered to the plant and actually delivered at the retorts?

Objected to same grounds.

A. It enables them to receive their coal much cheaper than they would do if they were in a city off of the Ohio river or if they were located away from the river in Louisville.

34. State if you know the prevailing prices charged by that company for fuel and illuminating gas furnished through its distributing system to the citizens of Louisville?

Objected to same grounds.

A. I am one of their customers and I know their prices; they charge $1.00 per thousand net for gas furnished for light and 75 cents per thousand net for gas furnished for fuel; the lighting price has been reduced within the last few years from $1.35 per thousand.

35. Of the total amount of gas furnished to consumers by the Louisville Gas Company, do you know the respective proportions sold for fuel and illuminating purposes?

Objected to same grounds.

A. I do know; they furnish 70 per cent. for light and 30 per cent. for fuel.

36. At the respective prices for fuel and illuminating gas
2027 which you have testified to and the proportionate amount sold for each, what is the average price received by that company for all gas delivered by it?

Objected to same grounds.

A. 92½ cents per thousand cubic feet.

37. State if you know the extent of the distribution system of the Louisville Gas Company, the number of miles of mains and services it has and the number of meters through which its gas is distributed?

(Objected to same grounds.)

A. They have about 180, miles of mains, 19,000 meters and I don't know how many services but the number of services is approximately the same as the number of meters, but not exactly the same.

38. State if you know the cost of Youghiogheny coal delivered at Louisville at the works of the Louisville Gas Company?

Objected to same grounds.

A. It is about $1.75 per ton on the average from year to year they get it by barge.

39. State if you know whether the Louisville Gas Company is operating under a special charter from the State of Kentucky, and if so, about when the same was obtained?

Objected to same grounds as before and also as not the best evidence.

The MASTER: I do not see the materiality of it. What difference does it make whether they operate under a general or special charter?

Mr. ABBOTT: That is a fact I cannot very well expose at the present time. I will state, however, that this line of examination is a foundation for further evidence.

The MASTER: The witness may answer subject to the objection.

A. They are operating under a special charter passed by
2028 the legislature about 1888 and concurred in by the city council of the city of Louisville. In other words, both the State and city are parties to it.

40. State if you know whether in accordance with the requirements of said company's charter, or any agreement between it and the city of Louisville by ordinance or otherwise, the said Louisville Gas Company furnishes a report to the city of Louisville, or State of Kentucky, as to the cost of manufacture and distribution of gas delivered by it in Louisville?

Objected to same grounds as before.

A. It makes no report to the State but it does report every year to the city of Louisville the cost of the gas and the other operations of the company.

41. Are those reports published, if so, under what authority?

Objected to same grounds as before.

A. They are published in the annual reports published by the city; the last one, however, was not published.

42. Are you familiar with the natural gas as a competitor of artificial gas?

(Objected to same grounds.)

A. Very familiar. Natural gas is such a serious competitor of an artificial gas company that if a natural gas is found in quantity

sufficient to supply the needs of a town, the artificial gas company there might as well go out of business; I advised a friend of mine in the artificial gas business that unless he could buy the natural gas wells to sell his plant and mains to them before they laid mains of their own. I did that from my own experience and observation as to the effect of the competition.

Cross interrogatories by Mr. TICHENOR:

1. With what gas company are you associated?

A. The Kentucky Heating Company of Louisville.

2029 2. In what business is that company engaged?

A. It furnishes natural gas and during those times of the year when the supply of natural gas is insufficient it makes artificial gas and sells it to the people.

3. Does it also furnish illuminating gas?

A. It does not. The law as expounded by the court of appeals of Kentucky says natural gas can be used for illuminating purposes but when mixed with artificial gas it must not be, so our practice in selling gas conforms to that decision and it is made our duty to see to it that our gas is not used for lighting purposes during the season of the year it is mixed and that is the season people want gas for lighting during the winter season.

Interrogatories by Mr. ABBOTT:

4. State whether natural gas is a competitor both with illuminating and with fuel gas and if it is a stronger competitor in either line state in which and your reasons therefor.

Objected to by defendants same grounds as before.

A. It is the strongest competitor in the line of heating and cooking, but for lighting purposes, also where the output is large enough to make the bills amount to anything, natural gas will drive out artificial gas every time; they use a Wellsbach burner as well as the other gas and the much smaller cost of it, the lower amount required to give light induces the hotels, restaurants and business places—all the people who burn a large quantity of gas, to change to natural gas, leaving the other gas company only the small consumers who don't think it worth while to make the change.

5. What elements, if any, in addition to the original source of supply, are there which lessens the cost of distribution of natural gas to a considerable extent as compared with artificial gas?

Objected to by defendants same ground as before and also because that question was all gone into in chief.

2030 A. The chief element is the larger output per meter; the next element is its freedom from any source of deposit in the mains and a consequent lessening of the number of complain-s that must be answered.

Mr. TICHENOR, resuming:

6. How long has your company been engaged in the business to which you have referred?

A. We began furnishing natural gas in 1889 and began supplementing it in 1893; I say our company—the original company went into bankruptcy and was re-organized in 1891 so the present company only dates from 1891; I was connected, however, with both companies.

7. And your answer refers to the entire period covered by the existence of both companies to date.

A. It does.

9. Has your company at any time since its organization in 1889 furnished illuminating gas in the city of Louisville?

A. We furnished a good deal of gas which was used for lighting, whether or not it was illuminating gas depends on how I construe the word.

9. My question was intended to cover that fact for light purposes?

A. I do not mean to quibble but that question was fought over in a three years' law suit; we furnish some for lighting purposes but we furnish a great deal larger quantity for heating purposes and the people use it for light.

10. Over what portion of the city of Louisville, as compared with the territory occupied by the Louisville Gas Company has your company operated and is it operating at the present time?

A. Generally speaking, the part of the city covered by our
2031 mains is more densely built up than the part of the city covered by the mains of the Louisville Gas Company.

11. Are you speaking now with reference to the entire distributing system of the two companies?

A. I am; of course, the Louisville Gas Company covers all the territory we cover and in addition they cover a good deal of territory we do not cover, and the territory they cover and we do not is not as well built up as that we cover.

12. Are you at the present time and have you in years past been furnishing gas to the citizens of Louisville for illuminating purposes?

Objected to as already answered, incompetent and immaterial.

A. We did furnish it for a little while and were enjoined by the court at the suit of the Louisville Gas Company on the ground it had the exclusive privilege of furnishing gas to the city of Louisville and on the further ground that our ordinance from the city limited our use of gas to heating purposes only and during the pendency of that injunction we allowed no one to use our gas for lighting and since the termination of that suit the use for lighting has been so limited; we have never encouraged it; the use of our gas for lighting had just gotten well started when this suit was brought and that stopped it; the reason it had just got started well

was that the Wellsbach burner, which is absolutely necessary to obtain light from natural gas, was only brought down to a cost where it could com- into general use about 1898 at the time this use I have spoken of begun.

13. Do we understand your testimony to the effect that natural gas cannot be used as an illuminant except through the Wellsbach burner?

A. Yes sir, that is true; you can get light from natural gas
2032 through what is called the Jumbo burner but the light is so bad and smokes the ceilings so that nobody would think of using it only the very poor.

14. Is it not true that for many years in the natural gas field in Indiana people have used natural gas exclusively for illuminating purposes?

A. Where that was done, it was a gas that carried with it a very large amount of vapor of oil which gives it a higher illuminating power than natural gas ordinarily has; where natural gas is found in the ground in conjunction with oil, it carries a little oil like benzine along with it and it will give a higher candle power than natural gas.

15. You have no knowledge, then, of the exact situation in the natural gas field on that question?

A. Yes sir, I have; I have been up there and inquired about it, looked at the grease in the burners and have seen them using gas there for illuminating purposes in the poorer class of houses.

16. Is it not also true for a number of years some of the towns were lighted exclusively with natural gas?

A. Through open tips? I know of no such case; I would not say there has not been such a case.

17. And the streets lighted in the same manner?

A. That is true; the streets, however, were lighted by what would not be called a gas light, it was a flambeau; a gas light is a thin flame smaller than a man's hand and in a flambeau the gas is first started by its own flame which increases the candle power and they burn it at from 100 to 150 feet per hour; those flambeaus were used to light the streets with.

18. What has been the output of your company per annum during the last 4 or 5 years?

2033 Mr. ABBOTT: We object to the question as not cross examination and inquiring into the private business of this witness, and we instruct him he need not answer the question unless he chooses to do so.

The MASTER: Answer the question subject to the objection.

A. I would rather not answer any questions specifically as to the Louisville Heating Company; we are continually engaged in competition with our rivals and every word I say under oath is carried to them; I found that out in my examination in the other case.

19. To what extent, if at all, does the operation of your company

in the city of Louisville affect the earning capacity of the Louisville Gas Company?

A. Wherever the law has allowed us to compete with them, we have driven them out entirely, that is, they do no cooking at all in the district our mains reach and as long as our gas was allowed to be used for lighting purposes they were seriously crippled by it and they have no domestic heating at all.

20. Does that fact account for their very low percentage of output used for fuel purposes?

A. To a large extent, I would say it did, but of course they have more than 100 miles of mains that don't parallel us, so in that district our competition does not injure them at all.

21. Then you have in all not more than 80 miles in the city?

A. We have not nearly that many; we have not as many as 40 miles; I would rather not say exactly how many we have.

22. Your system occupies the best portion for the kind of gas you are serving, does it not?

A. Generally speaking, yes sir; we pipe a great many streets occupied exclusively by laborers and mechanics and we find
2034 those streets excellent markets for gas, especially in summer; generally speaking our mains are laid in the district best for the sale of our gas.

23. What has been the growth of the business of the Louisville Gas Company since the introduction of natural gas as compared with the same question in other cities of corresponding size?

A. I know of no other city of corresponding size in which natural gas has been introduced under anything like the same circumstances as a competitor for artificial gas. By the same circumstances I mean hampered by legal restrictions as to its use.

24. Then the subject matter to which your last answer refers tends to curtail or limit the output of the natural gas if I understand you correctly?

A. It curtails its use a great deal more than it does its output; by that I mean a man that will use 40,000 feet a month for heating his house even if he were allowed to light it he would not use only 2,000 or 3,000 feet per month to light his house; so while it curtails its value to the consumer, it does not curtail its output much.

(The MASTER:)

25. I am not exactly clear in your testimony on this point. You have given the sum of $20,232, which you say should be added to Mr. Egner's estimate to correctly ascertain the cost of distribution of gas by the complainant company in the city of Peoria?

A. That is assuming that in all cases Mr. Egner put in a sufficient amount for the items which he did include. I have only added items which I consider Mr. Egner omitted entirely.

(The SAME:)

27. That is what I was going to get at. State whether or not you intend that gross sum which you say equals 12 9/10 cents per thousand cubic feet to be added to any estimate Egner made?

2035 A. It should be added to the estimate of 20.32 cents which is the figure resulting from Mr. Egner's figures when the errors in addition are corrected.

Re-direct interrogatories by Mr. ABBOTT:

1. Did you find any errors in the additions in Mr. Egner's evidence?

A. Mr. Egner himself called attention to several errors and I could not ascertain exactly what total he did finally arrive at, therefore, I took his figures totaled them correctly, divided them into outputs correctly and ascertained his figures came to 20.32 cents and my figures 12.9 must be added to that to arrive at the correct cost of distribution on the assumption that the allowances Mr. Egner made for the items he did include were sufficient.

(The MASTER:)

2. In other words, you put the cost at the figures he gave plus 12.9 cents?

Ans. Yes sir.

(The SAME:)

3. Whether some of your items are covered by him or not?

A. I am almost sure none of my additional items are covered by him; I think at least that amount must be added to his figures before you can arrive at the cost of distribution.

(Mr. ABBOTT:)

3. I think perhaps the last question asked by the master is a little misleading. Do you mean to be understood as saying that Mr. Egner's estimate on those items he did take into consideration are correct?

A. The master's question will not bear that interpretation.

(The MASTER:)

4. No, Mr. Egner fixed the amount for certain items for expenses and this witness adds an additional amount to those items and includes the amount allowed by Mr. Egner?

A. I include it but do not assume it is correct.

(The SAME:)

5. In other words, Mr. Egner's estimate is not correct in

2036 some respects and you add sufficient to make it correct?

A. No, I have not criticised at all any of the items Mr.

Egner has put into his estimate; I do not say they are right or wrong; I do say that Mr. Egner has omitted entirely a large number of items which are absolutely necessary and those items I have added together and find them to be 12.9 cents and on the assumption that Mr. Egner's totals were right his figures come to 20.32 cents, although he does not say so, and I add my 12.9 cents to the 20.32 cents resulting from Mr. Egner's figures without saying that is a correct figure because I have not verified it and don't wish to express an opinion that it is either too much or too little, but merely have not verified it.

FRANCIS W. LITTLE, recalled on behalf of complainant, deposes and says:

Direct interrogatories by Mr. ABBOTT:

1. You are the same Francis W. Little who has heretofore testified in this case both on behalf of the complainant and the defendant are you?

Ans. Yes sir.

2. Some evidence was offered by the defendant tending to show that the complainant company at some time had kept a bank account at the Commercial national bank in Peoria. State what is the fact in that regard?

Objected to as immaterial, incompetent, improper not rebuttal.

The MASTER: The witness may answer subject to the objection.

A. The complainant company never kept a bank account with the Commercial National Bank of Peoria.

3. What conversation, if any, did you ever have with Sumner R. Clarke with reference to the opening of such an account at
2037 the Commercial national bank?

Objected to same grounds as before. (Same ruling.)

A. We discussed the matter together and both reached the impression it might be a desirable thing to do but it was left to me and on further reflection I decided not to open the account.

4. State if you know whether or not the complainant company requires in the conduct of its business a working capital in addition to the investment actually shown by the record in its plant?

Objected to same grounds as before.

The MASTER: I do not think it competent as rebuttal but the witness may answer subject to the objection; I think I would take cognizance of that fact without any proof.

A. Yes sir, a working capital is necessary in the carrying on of the business.

5. Has it required such capital from the date of its organization to the present time?

Objected to same grounds.

A. Yes sir.

7. State in a general way for what purpose such capital is required and how much for the several purposes?

Objected to same grounds.

A. A working capital is necessary to carry supplies and materials in the service and meter department of the business, gas stove department and especially in the matter of providing the company with a sufficient supply of coal to take advantage of the market conditions with respect to coal; it is also necessary to have a working capital to enable it to carry on its business of selling coke, tar and ammonia. To explain further in this connection, the difference in the freight rate between the mines and Peoria on Youghiogheny coal is about 60 cents a ton between delivery by water to
2038 Cincinnati and rail to Peoria from Cincinnati, or all rail from the mines to Peoria. In other words, the all rail rate is about 60 cents a ton higher than the rate by way of Cincinnati. In getting coal by way of Cincinnati, however, it is necessary to take it and receive it at Peoria during the period when barges can come down the river as the storage facil-ties at Cincinnati are generally speaking inadequate; the condition of the water in the river frequently prevents any coal coming down for weeks and sometimes months at a time, and then a large number of tows will come down at once; under those conditions we have to get the coal in as many cars per day as we can take care of and store it with the result that at times we have a large accumulation of coal on hand which we have to pay for and hold it until we are ready to use it; the coke has to be handled in a somewhat similar manner; coke is demanded from us in large amounts at certain seasons of the year and in very small amounts at other seasons of the year and we have to accumulate it during the dull season to supply the demand at the more active season or sell it at greatly reduced prices; the summer months are usually the dull season in coke beginning about March and ending about the first of September. The tar market is in much the same condition; we accumulate tar in the wells during the winter months and sell it during the summer months largely to roofers and pavers. Ammonia we have to accumulate until we have at least a car and sometimes two cars on hand.

8. What is the result of making use of this working capital for the purpose of procuring a large amount of coal when freight rates are favorable on an economical working of the plant?

Objected to same grounds as before.

A. We save from 45 to 60 cents a ton in coal by reason of having a working capital sufficient to store the coal and as to a
2039 considerable proportion of our coke we get at least 50 cents and often a dollar more a ton for it than we could get if we had to sell it as produced and could not store it. It requires in

Peoria from $30,000. to $40,000. of a working capital to take full advantage of the coal, coke and tar market.

9. That your answer may be responsive, I will ask what working capital in your judgment could advantageously be employed and should be employed for an economical working of the plant under the conditions as they exist in Peoria?

Objected to same grounds.

A. I think we should never have less than $40,000. available working capital under the conditions existing in Peoria.

10. Directing your attention now to the contract under which complainant company furnished gas to the Peoria Gas Light and Coke Company which has been offered in evidence marked "Exhibit 32" you will please state what effect the enlarged output occasioned by the operation of your plant while furnishing the gas called for under said contract has had upon the general depreciation of the plant as testified to by you on your former examination?

Objected to same grounds as before.

The MASTER: I do not think that competent; I do not think it is rebutting testimony at all.

Mr. ABBOTT: The defendant put in evidence here what we claim is an abnormal condition and operation of the plant, and we certainly have a right on rebuttal to show first the effect on the plant as it at present exists as a result of that contract and in as much as their evidence in a large measure assumes a continuance of that operation we have a right to show if we can that such arrangement could not be continued with the plant in its present condition.

The MASTER: Suppose you rent it for any other purpose,
2040 it is a voluntary undertaking on your part. I think it competent for you to show, if you desire, what effect it had on the economic production of gas, but what effect it had as tending to depreciate the plant I do not see how it becomes material.

Mr. ABBOTT: It becomes material if those months of operation are material at all; we insist they are not, but if they are we certainly have a right to find out all about it.

The MASTER: I do not think it rebutting evidence; it was an undertaking on your part and if the increased output has anything to do with the cheapening of the cost of production that is one question, and if the increased output has anything to do with the depreciation of the plant that is another question.

Mr. ABBOTT: The master cannot mean to hold that under that contract any such facts can be shown as may be favorable to the defendant while those that are favorable to our contention are to be excluded; if this is in for any purpose it must be in for all purposes.

Mr. IRWIN: The master held and so did Judge Humphrey that they had a right to go into the whole work of the plant up to the time of the close of the evidence; if the defendant had a right to

go into it for one purpose we have a right to go into it for all purposes.

The MASTER: For all purposes tending to shed any light on the material inquiry in this case.

Mr. ABBOTT: The material inquiry is the cost of the manufacture and distribution of gas and after showing depreciation is an element of that if they had a right to show anything at all about this unusual operation we have a right to show the depreciation increased by it.

The MASTER: Have you the right to show it on rebuttal?

Mr. ABBOTT: We could not show it in chief for we could not anticipate it.

2041 The MASTER: You could have anticipated the defendant had a right to go into this question up to the close of the testimony, but I think the true rule in equity is this: You are not bound by any rigid rules of evidence and anything that tends to shed any light upon this inquiry is competent at almost any stage of the proceedings; I think the courts are tending to that inclination in regard to equity proceedings. I will admit the evidence subject to the objection and it will be for the court to determine its competency at this stage of the proceedings.

A. The depreciation, during the period referred to, of the manufacturing plant has been greater than normal and greater than the amount I previously testified to as to its probable depreciation, on account of the fact that during a considerable portion of the time the plant was run beyond its normal capacity and beyond the amount of gas for which it was intended. In other words, was forced, naturally resulting in a greater depreciation.

11. Please state whether the manufacturing plant of the Peoria Gas & Electric Company in its present condition is sufficiently large to enable it indefinitely to manufacture the volume of gas manufactured by it during the existence of the contract with the Peoria Gas Light & Coke Company, together with the volume manufactured for its own consumers?

Objected to same grounds as before.

A. No, it is not large enough to continue to make that quantity of gas indefinitely.

12. Would it be feasible in your judgment to continue such volume of manufacture with the present plant, if not, why not?

Objected to same grounds as before.

A. No, it would not be feasible to continue to manufacture that volume of gas in that plant for the reason that the working capacity of the retort house is about 600,000 feet a day—the max-

2042 imum being 630,000 feet a day when all the benches are in good condition. Under the contract referred to last winter we were forced to make 680,000 feet per day and it strained the plant;

the condensing plant was also forced beyond its capacity as it was designed, as shown in my testimony, originally as a 500,000 foot plant and the gas could only be made and furnished while the plant was new and before it became necessary to let down any of the benches for refilling or maintaining extensive repairs. For illustration. The scrubbers and condensers were in continuous operation during the ten months' period and at the close were almost completely stopped up and would have been stopped in a few weeks' longer use absolutely. It is also necessary, and the plant is so arranged, that the different parts of the apparatus can be by-passed for cleaning and repairing; that could not be done during any portion of that time we were furnishing gas under the contract to the Peoria Gas-light & Coke Company.

13. What additional equipment, if any, would be required for the manufacturing plant to enable it to furnish continuously the volume of gas manufactured by it during the ten months' period of that contract, and what substantially would be the cost of such additional investment?

(Objected to same grounds as before.)

A. It would require at least three additional benches of 9 retorts each with a house to cover them; an additional air condenser; an additional P. & A. tar extractor; another Chollar washer; two more scrubbers and probably one more purifyer. These apparatus would cost, including the foundations with the necessary building for housing the retorts, somewhere from $40,000 to $50,000.

14. In this connection I wish to ask you the reasons from the standpoint of the representatives of your company who had in charge the making of that contract, for the contract containing a provision enabling the same to be terminated at the option of
2043 either party on the notice therein stated?

Objected to same grounds and because the contract speaks for itself.

The MASTER: I think so; I do not think it makes any difference what the reason was; the contract is a contract; what reasons there were for making it is wholly immaterial.

Mr. ABBOTT: We would like to have the question answered.

The MASTER: The witness may answer subject to the objection.

A. On the part of the Peoria Gas & Electric Company the matter was determined by myself; I considered the insertion of that clause desirable because I felt quite sure our plant was insufficient to continuously make all the gas and I didn't know at the time what additional apparatus would be required to carry out the contract nor the amount of investment it would take.

15. Assuming that the gas sold by the Peoria Gas-light & Coke Company during the existence of that contract amounted substantially to 100,000,000 cubic feet, that the fair market value in cost of the said company's plant is $600,000, as testified to by a witness for

the defendant, Mr. Henebery, or $580.000, as testified to by another witness, you may please state how much should be added to the cost price of the gas to that company to cover depreciation on the said plant assuming that the depreciation is 6% per annum?

Objected to as incompetent, improper, immaterial, not rebuttal and also as assuming something which does not appear in the evidence; Mr. Henebery did not testify the cost of that plant was $600.000.

The MASTER: I do not think the question competent. Do you desire to press the inquiry?

Mr. ABBOTT: We do.

The MASTER: The witness may answer subject to the objection.

A. On the basis of the cost of the plant being $600.000
2044 the depreciation at 6% would add 36c. a thousand feet to 100,000,000 feet of gas and on the assumption that the plant cost $580,000. 6% depreciation would add 34.8 to the cost of 100,000,000 feet of gas.

16. That is on the assumption of 6% depreciation per annum?

A. Yes sir.

17. On the same assumption as in the previous question, how much should be added to the cost of that gas to cover the depreciation as stated and interest on the investment at 10% per annum?

Objected to same grounds as before. (Same ruling.)

A. Interest at 10% on a cost of $600.000. would add 60 cents a thousand feet to 100,000,000 feet of gas; on the assumption the plant cost $580,000. 10% interest on the cost would add 58 cents a thousand feet to 100,000,000 feet of gas.

18. Please state if you know what is the average distribution of gas per mile of main per annum in cities approximatelt the size of Peoria?

Objected to on the same grounds.

A. Depending somewhat upon local conditions, the average ranges between 1500,000 and 2,000,000 feet per mile of main per annum; under special favorable conditions it sometimes reaches a figure slightly in excess of 2,000,000 feet per mile of main where the territory is thickly built up and the competition of other fuels makes the use of gas economical and desirable.

(The MASTER:)

19. For lighting purposes?

A. For fuel more especially.

(Mr. ABBOTT:)

20. You may state also what is the average distribution of gas per annum per meter in cities approximately the size of Peoria under usual and ordinary conditions of distribution.

Objected to same grounds as before and also because no foundation has been laid.

2045 The MASTER: He may answer subject to the objection.

A. The usual and ordinary amount in cities of that size is about 20,000 feet per meter per annum excepting in the case of those large suburbs of still larger cities where gas is used very extensively for fuel purposes and for gas grates and in that event it may reach an average amount of 30,000 feet per meter; this, however, is very rare.

21. Is it true that the average consumption per annum *per capita* ever reaches 6,000 or 7,000 cubic feet per annum in American cities?

Objected to same grounds as before and also as leading and suggestive. (Same ruling.)

A. No sir.

22. What is the average annual consumption *per capita* in cities approximately the size of Peoria?

Objected to same grounds.

A. Excepting under the conditions just previously referred to, in the case of a high grade residential suburb of a very large city, the average sales *per capita* are from 1700 to 2200 feet, very rarely exceeding the latter figure, except in the case of some suburb such as I have referred to or other unusual conditions.

(The MASTER:)

23. How would it be in a city the size of Peoria?

A. I should say from 2000 to 2500 feet *per capita* would be more than the average; figures ranging between 2000 and 2500 feet would cover 90 per cent. of the cities approximately that size in America including the city of Peoria itself. In other words, the present gas consumption in Peoria is in excess of the average of cities of like size.

(Mr. ABBOTT:)

24. Would the location of large manufacturing industries using coal gas as a fuel in cities also increase the *per capita* and
2046 per meter consumption?

Objected to same grounds.

A. Yes sir, very largely.

25. State whether or not there exists in Peoria any of the unusual conditions to which you have referred either in the way of the use of gas by manufacturers or the existence of large rich suburbs?

(Objected to same grounds as before.)

A. No sir, there are no such special conditions in Peoria; there are no manufacturers that I know of that use any considerable

quantity of gas for fuel and there is no rich suburbs where the consumption of gas is large *per capita*.

26. How does the normal consumption per meter and *per capita* of gas distributed by the Peoria Gas & Electric Company through its own meters and services compare with the consumption in other cities of substantially the same size and character where there are none of those unusual conditions to which you have referred?

Objected to same grounds.

A. The consumption of gas through the mains and meters of the Peoria Gas & Electric Company is fully up to the average both as to meters and miles of main. In other words, the consumption per meter and consumption per mile of main is fully up to the average, in fact, a trifle in excess of the average.

(The MASTER:)

27. Is that true as to both gas used for illuminating and fuel purposes?

A. It was true when we kept separate accounts and I presume it is still true.

(Mr. ABBOT:)

28. What is the average annual consumption by customers of your company per meter?

Objected to same grounds.

A. The average consumption per meter per year is 20,193
2047 feet, that is, the amount of gas sold per meter per year is 20,193 feet, and the amount of gas sold per mile of main is 1,710,400 cubic feet.

29. I think you have already stated th-t those averages both per mile and per meter were fully equal to and a little in excess of the average of cities of similar size?

Ans. Yes sir.

30. In your opinion as an expert and practical gas man, state whether it would be possible to make a further development of the business of your company result in a larger consumption of gas through its present meters and main system and give your reasons for whatever conclusion you arrive at?

Objected to same grounds as before.

A. I see no reason to expect or to believe possible any material increase in the amount of gas consumed per meter or mile of main, since the amount is now up to and above the average and all I think that can reasonable be expected from the territory in question and further material increase must come, in my opinion, from an extension of the main system and securing new business in that way.

31. When you speak of an increase in the main system, state

whether or not you intend to include in that a further increase in the number of services and meters for the purpose of supplying the additional amount?

(Objected to same grounds as before.)

A. N-cessarily so; the additional consumers would each have to have an additional service and meter.

32. That I understand would also involve the additional expense of laying additional distributing mains?

A. Yes sir, additional distributing mains, services and meters; an additional investment would be required in other words.

33. State if you know what is the general practice of gas companies with respect to coating service pipes?

2048 Objected to same grounds as before.

A. Nearly all gas companies coat their service pipes.

34. What are the different materials used for that purpose?

A. Either tar or tar modified by using a little lime to neutralize the acid and some crude rubber with it, or a carbon paint of some sort; generally coating is some of the forms of tar paint.

35. In your former testimony concerning the normal life of services, etc,, did you base such evidence upon the theory that the service pipes were coated in some one of those manners?

Objected to same grounds.

A. Yes sir.

36. What is shown by experience in those matter- as regards the limitations of this protection given by such coating?

Objected to same grounds.

A. Coating does only a certain amount of good; in the first place I know of no material, and have never heard of any material, in the form of paint which will successfully resist acids and especially the acid actually found in the soils of public streets. Again, in order that the coating may dry and not be subject to undue abrasion and removal from mechanical causes, the pipes are almost universally coated before they are laid and allowed to dry; in securing them together the tools that are used necessarily break off or rub off a portion of the coating, leaving at the point of the attack with the tools an exposed part of the pipe which rusts as readily as if there had never been any coating there; in a measure that can be prevented by coating the pipe at the tool mark after putting in the ditch but that comes off in part by almost immediately refilling the ditch and my observation and experience has been that the tool marks leave a bare spot which is subject to the action of the acids in the
2049 soil and the other causes which produce injury to the pipes, but of course, if a pipe is pitted at that point, eaten through at that point, as frequently happens, it is just as bad as if no portion of the pipe had ever been coated.

37. That is no part of the pipe is stronger than ——

A. (Interrupting.) Weakest part.

38. Do you know whether or not the information given to the expert witnesses called by the complainant prior to their examination included information as to the coating of service pipe?

Objected to for the reasons heretofore stated, that being clearly a matter for investigation in chief.

The MASTER: I think so; I don't think it competent.

Mr. ABBOTT: We think it clearly rebuttal for this reason, we have introduced evidence in chief as to the depreciation in the average life of service pipes; the defendant has introduced evidence tending to show that if the pipes were coated their life would be longer and we certainly have a right to rebut any inference which may be drawn from that line of defense by showing our pipes were coated and that the expert witnesses who estimated the life of those services did it on the basis of the pipes being coated.

The MASTER: Were not you obliged to do that anyway in chief whether the defendant introduced any evidence or not touching that question. The witness may answer, however, if you want to press the inquiry subject to the objection.

Mr. ABBOTT: We certainly do.

A. Yes sir, all the witnesses knew that the services were coated and that that was the practice of the company.

39. What is the effect of the imperfections in paint and
2050 coating referred to by you upon the machinery in the manufacturing plant of the company with reference to the possibility of keeping the same absolutely protected?

Objected to same grounds as before. (Same ruling.)

A. I know of no paint which will hold against the action of the sulphurous fumes converted into sulphuretic acid by the moisture around gas works or which will hold against the presence of ammonia; every paint I know of, or have ever heard of, will be disintegrated by the action of these fumes and gases and in a relatively short time, if the machinery is in operation constantly, it is manifestly impossible to keep it painted; it can only be successfully painted by throwing it out of use, which can be done at certain times, and is done at certain times, but it is utterly impossible in my judgment to use any form of paint or coating of pipes which will, be anything like an absolute protection of the metal against the fumes and gases present in a gas works.

40. What is the effect, if any, of the contraction and expansion of the machinery and apparatus on the protection which can be furnished by any coating of which you have knowledge?

Objected to same grounds. (Same ruling.)

A. As to all pieces of apparatus, such as condensers, scrubbers, purifyer covers and apparatus—and apparatus of that sort, there is

considerable expansion and contraction which is transmitted to the joint with the result that the paint is broken at the joint of the metal and water gets in there, or the water due to sweating, condensation of moisture, gets in there, or the metal is attacked at those points by the injurious gases and fumes about the works.

41. And would it not be a fact that under those circumstances the whole apparatus would be affected by the exposure at
2051 certain points in the apparatus in a similar manner as you have already testified and entire service pipes would be affected if it were affected at points near the joints.

Objected to on same grounds and also as leading and suggestive.

A. Unquestionably the injury to a sheet at the joint would be equivalent to an injury to the entire sheet; it would amount to the same thing if the metal is destroyed at that point, it might in a majority of instances, be as well destroyed throughout its entire area and surface.

42. How does the expansion and contraction of the different pieces of apparatus in a gas works correspond to that made use of in other manufacturing establishments?

Objected to same grounds as before.

The MASTER: If he knows, he may answer subject to the objection.

A. It is greater by reason of the different changes in temperature; the fact you are handling hot material instead of cold creates more contraction and expansion—the difference between working temperatures, and where a piece of apparatus for any reason lies idle.

43. What operating causes are there, if any, which result in a depreciation of the covers of purifyers which can be effectively guarded against by merely painting the same?

Objected to same grounds. (Same ruling.)

A. The fact that sulphuretic acid and ammonia is always present in and about purifyers, or the purifyer seals; or as I stated before this will destroy any paint I know anything of, or any kind of grease I know anything of, and will permit injurious acid and fumes to attack the metal itself; of course, we always protect it, so far
2052 as we can, but nothing I know of is an absolute protection against corrosion of the covers of the purifying boxes.

44. What is the cost generally to gas companies in your experience with respect to painting or coating the covers of purifying boxes?

(Objected to same grounds.)

A. The cost is not excessive; paint that is used being paint which costs about 75 cents per gallon—tar that has been prepared by the use of lime and rubber costing about 25 cents a gallon; crude oil costing 3 or 4 cents a gallon; it is more a question of an opportunity

to get at them to paint them when the boxes are in use. If they are in constant use, they are not available for being painted.

45. That is, if I understand you correctly, it involves temporary cessation of some parts of the plant necessary to the economical and proper manufacture of gas?

A. Yes sir, the cover has to be thrown out of use long enough to permit the paint to dry before it is put back into the wet seals.

46. Under the treatment you have just described, what is the average life of a cover of a purifying box?

Objected to same grounds and also because the witness has already covered that in his former testimony.

The MASTER: I think so, but the witness may answer subject to the objection.

A. 7 or 10 years.

47. If the plant of the Peoria Gas & Electric Company in its original construction had been equipped with benches of 6's instead of benches of 9's, what, if any, additional space would have been required for retort house purposes in order to give the retort house the same capacity as a plant as it exists today?

Objected to same grounds.

The MASTER: The witness may answer subject to the objection.

2053 A. One bench of 6's requires almost exactly the same ground area that a bench of 9's does. In other words the ordinary space between the centers of the arches of a bench of 6's is 12 feet 6 inches and in a bench of 9's 12 feet 7½ inches, so a bench of 9's occupies but 1½ inches more ground space than a bench of 6's; a bench of 9's has a capacity larger per retort than a bench of 6's; in ordinary operation 50,000 feet to a bench of 6's is about all that can be gotten out of them having due consideration to the quality of gas being produced; a bench of 9's will readily produce 90,000 feet per bench and even can be pushed above that without any material sacrifice to the quality of the gas, so that, you would have to have at least 11 benches of 6's to equal the productive capacity of 7 benches of 9's which would increase the ground area and the size of the retort house a little more than 50%.

48. At the time of the construction of your plant, or rather the planning for its construction, did you investigate and consider the advantages which you have enumerated of benches of 9's over benches of 6's?

(Objected to same grounds.)

A. Yes sir, it required very little investigation to dispose of that question, and further, because in the situation at Peoria, for the reasons I stated this morning, it was very desirable we should have the very largest possible coal storage area and we did not wish to sacrifice any coal storage for any unnecessary reason, and aside from that, we further considered benches of 9's much more econom-

ical and much better adapted to the gas making business at Peoria than benches of 6's and are still of the same opinion.

49. What effect, if any, does the increasing use of fuel gas have upon the advantages of benches of 9's over benches of 6's?

2054 A. They render it unnecessary to lay off benches in the spring; about the time the winter lighting business grows lighter, the fuel business commences and the fluctuation of the daily output between winter and summer is not nearly so great as before the advent of fuel gas.

50. Some evidence has been offered by the defendant in this case touching advantages claimed for small purifying boxes and using more of them. I wish you would state what the advantages are, if any, in the use of the larger boxes in the way of securing economy of space or in any other manner any economical operation of the plant?

Objected to same grounds and also assuming something that is not in evidence.

The MASTER: The witness may answer subject to the objection.

A. The use of the largest available boxes and the least in number is more economical than to use more boxes of smaller area both from the standpoint of investment and operation; the larger boxes cost less per unit of capacity and they are easier to operate for the reason there is a less number of valves and connections to be taken care of and in emptying the boxes a very much larger amount of oxide can be dumped in one operation. In other words, if your boxes have sufficient capacity so one box will handle the daily make of gas the other box can be thrown out of service, the oxide dumped and revivified and put back into the box cheaper than with a number of small boxes; there are less valves to leak and they occupy much less ground area, take less building space.

2055 Mr. ABBOTT: I now desire to ask the witness some questions relating to the operation of the plant during the year following September 1, 1901, preparatory to offering such statements in evidence, but before doing so, I desire to have the following statement of counsel incorporated into the record.

May it please the master: At a previous hearing, the master stated he desired a statement showing the actual cost of the manufacture and distribution of gas, from September 1, 1901, to September 1, 1902. In the opinion of counsel for complainant, a statement covering the manufacture of gas subsequent to October 24, 1901, and prior to August 20, 1902, would be immaterial, irrelevant, misleading and not pertinent to the issues in this case; and so far as complainant is concerned, were it not for the request of the master, counsel would merely offer operating statements from September 1, 1901, to October 24, 1901, and operating statements from August 20, 1902 to the present time. Out of deference, however, to the wishes of the special commissioner, we have prepared a statement

showing the cost of manufacture and distribution from September 1, 1901, to September 1, 1902, under conditions as shown by the record, and in substantially the same general form as the operating statements heretofore offered in evidence by the complainant in chief; and we now produce such statements for such action
2056 in the premises as to the special commissioner may seem proper, but we do not desire to offer the same in evidence as evidence adduced by and on behalf of the complainant in rebuttal or otherwise, deeming the same to be as heretofore stated, irrelevant, immaterial, misleading and not pertinent to the issues, but simply showing the result under unnatural and abnormal conditions, which have not ceased.

Q. Have you prepared a statement showing the cost of manufacture and distribution of gas by the complainant company from September 1, 1901, to September 1, 1902, including the gas manufactured for the Peoria Gas Light and Coke Company, under the contract in evidence marked, Exhibit "32," but not including the cost of the distribution of the gas by that company for gas furnished by your company to it?

A. Yes sir, I have.

Q. From what source did you obtain the data and information for the statement you produce?

A. From an examination and inspection of the original vouchers of the company showing the payment of the money; an examination of the original vouchers and bills of lading, showing the receipt of the coal; from an examination and inspection of the original daily statement of the gas makers at the works, showing the amount of coal used and the amount of residuals produced, and from taking these vouchers and checking them over against the summaries in the books of the company.

2057 Q. Have you also a statement showing such details of the operation of the works as do not pertain strictly to the cost of production and distribution?

A. Yes sir, I have prepared a statement which shows the amount of gas made during the period, the amount of coal used to make the gas, the amount of each kind of residual produced, the amount of gas sold and delivered at the holder of the Peoria Gas Light & Coke Company, the amount sold to the consumers of the Peoria Gas & Electric Company, statements as to candle power, and all of the facts of which we have record pertaining to the results of the manufacture and distribution of gas.

Q. Will you hand those two statements to the master to be marked as exhibits?

A. I will.

(Said statements are marked by the master, Exhibits 43 and 44.)

Q. State whether the totals, as shown on Exhibits 43 and 44, which are the statements referred to in my last preceding interrogatories,

are true totals as shown by the books and vouchers of the Peoria Gas & Electric Company and represent all the actual expenditures made by the said company during the period they purport to cover in and about the operation of the gas plant of said company in the manufacture and distribution of its gas, during the period of from September 1, 1901 to September 1, 1902?

Objected to by defendant as incompetent, improper and
2058 immaterial.

The MASTER: The witness may answer subject to the objection.

A. Yes sir.

Q. Are the vouchers, duplicate vouchers and sub-vouchers showing all expenditures in detail now present in court for inspection and examination by the special commissioner and counsel for the parties?

Objected to by defendant, same ground.

A. Yes sir.

Q. Do these statements marked Exhibit 43 and 44 contain true and correct compilations as taken by you from the documents to which you have referred?

A. Yes sir.

Mr. ABBOTT: I now hand to the special master said exhibits marked "Exhibit 43 and 44," for his instruction as to their further disposal.

The MASTER: Hand them to counsel for defendant.

(Mr. Abbott of counsel for complainant, hands said exhibits to defendant's counsel.)

Mr. TICHENOR: If the master pleases, we object to evidence being put in the record by method of this character, for the reason it is irregular, unwarranted and without any proper authority whatever. If counsel proposes to make any use of the statements, the only way that can properly be done is to offer them in evidence in
2059 the regular and usual manner, and give us an opportunity to interpose such objections as we may think proper. It is only an attempt to get something into the record without assuming the responsibility of it in any manner, and without in any way being bound by it.

Q. Where can be found the original vouchers showing the itemized cost of each and all of the expenditures shown in these statements marked Exhibits 43 and 44?

A. They are in the office of the Audit Company of Illinois, 416 New York Life building, Chicago.

Q. Can you produce them?

A. Yes sir.

Mr. TICHENOR: If the master please: My objection was not aimed

at the absence of the original source of the evidence, or as to the correctness of these exhibits referred to; it was purely as to the method being employed. We wish to be understood, however, that we are not waiving that question at all, as it will be time to raise that when the subject matter is properly presented.

The MASTER: I will say to counsel for defendant that under the ruling of the court and the master as well, I think it incumbent on complainant to go into that question, covering the period elapsing from September 1, 1901, up to the time the taking of testimony is closed in this case; I think that is clearly indicated by the ruling of the court on that question.

Mr. MANSFIELD: That is very true, but it seems to me if counsel for complainant do not want to take advantage of the ruling of the court and the master on that question, and do not want to assume the introduction of those exhibits, they certainly should not be allowed to go in in any other manner.

2059½ It is stipulated, by and between counsel for the respective parties, that the record in this case shall show the close of the testimony as of the date of September 30, 1902; that counsel for complainant will introduce all of their testimony on or before said date, with the exception of the operating statement of complainant company for the month of September 1902, similar in character to the operating statements already introduced; that said operating statement shall be prepared and put in evidence as early as possible after October 1, 1902, and not later than October 10, 1902; that counsel for defendant shall have an opportunity to cross-examine the witness Francis W. Little up to and including October 15, 1902.

Upon the failure of either of the parties to comply with this stipulation they shall be deemed to have waived the right to offer any further testimony hereunder, unless the taking of testimony shall have been delayed by the special master in this case.

Chicago, Ill., September 24, 1902.

E. C. RITCHER,
W. T. ABBOTT,
W. T. IRWIN,
Solicitors for Complainant.
F. H. TICHENOR,
HENRY MANSFIELD,
Solicitors for Defendant.

O. K.
HUMPHREY, *J.*

Adjourned by agreement until Thursday, September 25, 1902, at 10 o'clock a. m.

2060 Directors' room, Equitable Trust Co., National Bank building.

CHICAGO, ILL., THURSDAY, *Sept.* 25, 1902—10 a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner; Mr. W. T. Irwin, Mr. R. C. Ritcher and Mr. W. T. Abbott, appearing for complainant; Mr. Henry Mansfield, city attorney, appearing for defendant.

Mr. ABBOTT: Under the ruling of the master, complainant offers in evidence the operating statements heretofore identified by the witness for the year from September 1, 1901, to September 1, 1902, said statements being marked by the master "Exhibits 43 and 44."

Mr. MANSFIELD: Under the statement made by counsel for complainant, the defendant objects to this method of introducing said operating statement, for the reason it is irregular, unwarranted, and without any proper authority whatever; if counsel propose to make any use of the statements, the only way it can properly be done is to offer them in evidence in the regular and usual manner and take upon themselves whatever responsibility is attached to the introduction of the evidence: at this time, we desire to have it understood these objections merely refer to the evidence as being introduced under the statements made by counsel for complainant.

Mr. RITCHER: If I understand counsel for defendant aright, he makes no objection to the competency of the evidence offered but merely objects because we offer it under the ruling of the master and not of our own initiative. Am I correct?

Mr. MANSFIELD: And for the further reason it is not proper rebuttal.

The MASTER: The exhibits may be admitted subject to the objection.

Whereupon said operating statements marked "Exhibits 43 and 44" were read to the master in the words and figures following, to-wit:

2061 EXHIBIT "43." I. C. Pinkney, Master.

Operating Statement for Year September, 1901, to August, 1902.

Gas sold to P. G. L. & C. Co			104,634,200	
Gas sold as per consumers' meters			47,412,300	
Total expenditures as per statement below				152,046,500 c. f.
				$122097.36
Less value of residuals made:				
22,870,354 lbs. coke	at $3.25	per ton	$37028.19	
1,237,070 " breeze	" 1.00	" "		
31,700 " retort carbon	12.00	" "	618.53	
200,607 gal. tar	at .05	" gal	190.20	
68,694.3 lbs. ammonia	" .08	" lb	10030.35	
			5495.56	
				53542.83
Net actual cost without depreciation or interest				68554.53

Net cost per thousand cubic feet of all gas sold after deducting value of all residuals made	.456
Cost per thousand cubic feet of gas sold to consumers of Peoria Gas & Electric Co. after deducting value of all residuals made and including depreciation at 6½ % on cost of property excluding cost of real estate	1.036
Cost per thousand cubic feet of gas sold to consumers of Peoria Gas & Electric Co. after deducting value of all residuals made and including depreciation at 6½ % on cost of property excluding cost of real estate and including interest at 10% on cost of property	1.952

2062 EXHIBIT "43" (Continued).

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	2366.64		2366.64
2	Accounting department	5184.85		5184.85
3	General office sundries	341.79	436.23	778.02
4	Canvassing	1265.89	399.58	1665.47
5	Insurance		271.50	271.50
6	Rentals		532.34	532.34
7	Interest			
8	Taxes		7644.84	7644.84
9	Legal exp., loss & damage		16479.75	16479.75
10	Stationery, ptg. & postage		998.74	998.74
11	Stable expenses	515.15	1643.98	2159.13
	Manufacturing:			
13	Generator fuel			
14	Gas fuel		47145.36	47145.36
15	Boiler fuel		2811.39	2811.39
16	Bench fuel		7755.60	7755.60
17	Manufacturing labor	17004.88		17004.88
18	Manufacturing supplies		267.49	267.49
19	Oil			
20	Eurichers		94.41	94.41
21	Purification labor	680.56		680.56
22	Purification supplies		394.22	394.22
	Distribution:			
23	Distribution labor	3252.77	60.10	3312.87
24	Distribution supplies	364.80	558.38	923.18
	Miscellaneous:			
26	Mscl. supplies & expenses	442.43	478.13	920.56
	Repairs & renewals:			
27	Repairs & renewals meters	177.51	39.65	217.16
28	Repairs & renewals services	84.04	122.35	206.39
29	Bench repairs	41.67	70.34	112.01
30	Gas house & m'ch'y repairs	509.79	1424.66	1934.45
31	Repairs & renewals mains	228.06	7.49	235.55
		32460.83	89636.53	122097.36

2062a *Corrected Statement.*

EXHIBIT 43. Record, vol. 7, 2062.

Gas made (Exhibit "44") during year Sept. 1, 1900, to August 31, 1901	158,454,200 c. f.
104,276,900 was delivered to Peoria Gas Light & Coke Co.	
47,412,300 " " consumers of Peoria Gas & Elec. Co.	
1,015,800 " gas donated.	
152,705,000 total amount of gas sold and delivered.	
Total expense of Peoria Gas & Elec. Co., Exhibit "43," vol. 7, page 2062	$122097.36
Value of residuals, as per Exhibit "43"	53362.83
Net actual cost of gas sold and donated, without depreciation or interest, according to Exhibit "43" in which a mistake has been made in adding up value of residuals	$68734.53
Total expense of Peoria Gas & Electric Co., as per vouchers (Rec. vol. 7, page- 2103 to 2129)	$111,336.68
To which add insurance and taxes, $7916.34, making	$118790.27
Or a difference of $3307.09 toward cheapening the cost of gas; all of which is in attorneys' fees, except $15.27.	
Net actual cost per thousand cubic feet, after deducting value of residuals, as per expense as shown by Exhibit "43"	.45 + cents
Net actual cost per thousand cubic feet, as per vouchers (Rec. vol. 7, page- 2103 to 2129), to which has been added insurance and taxes, as per Exhibit "43" after deducting value of residuals	.428 cents
Actual cost per thousand cubic feet as per vouchers to which taxes and insurance has been added, but not including item for legal expenses, loss and damages amounting to $13,187.93 (vouchers Rec. vol. 7, pages 2103–2129)	.342 cents
Actual cost per thousand cubic feet of gas as per vouchers, to which has been added, insurance and taxes, and after allowing depreciation on basis of Mr. Cowdery's testimony, (Rec. vol. 1, pages 266 to 268) as being	
2062b	
5 per cent. on cost of manufacturing plant or	$7214.63
1 " " " " " mains	1200.81
5 " " " " " services	1928.75
7 " " " " " meters	922.18
Total depreciation according to Mr. Cowdery	$11266.37
(Or depreciation at .073 per thousand cubic feet)	.415
Actual cost per thousand cubic feet of gas as per vouchers, to which has been added insurance and taxes, and after allowing depreciation at .073 cents per thousand cubic feet of gas sold and donated, and after allowing interest at 8 % on total value of plant, as of date Sept. 1, 1902	.638
If sale of all gas sold and donated was made at 75 cents per thousand cubic feet, a surplus would remain of .118 cents per thousand cubic feet, or	$17012.96
Allowing leakage on gas furnished by Peoria Gas Light & Coke Co., through any new pipes, on basis of percentage of loss experienced by complainant company during period covered by operating statement "43," or a leakage of .032 per cent	3336.86
	$13676.10

Still leaving a surplus of $13676.10, and after *a* allowing 8 per cent. interest on an increased capital of $100,000 to extend the mains and buy meters, and install services so that complainant company may furnish all gas consumed in the city of Peoria, you have remaining $5676.10 with which to pay additional clerical services, additional taxes, etc. Or actual cost per thousand cubic feet of gas sold and donated, as per vouchers, to which has been added insurance and taxes, and after allowing depreciation at .073 cents per thousand cubic feet, and interest on total value of plant, as of date Sept. 1, 1902, at 5 per cent. per annum..... .558

2062c If sale of all gas sold and donated was made at 75 cents per thousand cubic feet, a surplus would remain of (.192) nineteen cents and two mills per thousand cubic feet, or..... $29319.36

Deducting amount allowed for leakage..... 3336.86

Still leaving a surplus of..... $25982.50

Or 5 per cent. on $586,387.20 with which to pay interest on increase capital, necessary to extend mains, buy meters and install sufficient services to deliver gas to all consumers in the city of Peoria, and pay depreciation on the extra capital so invested.

2063 EXHIBIT "44." I. C. Pinkney, Master.

Manufacturing and Distribution Statement for Year September 1, 1901, *to August* 31, 1902, *Inclusive.*

Gas:		
On hand September 1, 1901, cubic feet.....		219200
Made during year " "		158453200
To be accounted for.....		158672400
Sent out to our mains " "	54289200	
Delivered to Peoria Gas Light & Coke Company at their holder.....	104276900	
		158516100
On hand September 1, 1902, cubic feet.....		156300
Gas:		
Sent out to our mains cubic feet.....		54239200
Sold as per consumers' meters.....	47412300	
Used at office.....	239700	
Used at works.....	1378600	
Donated.....	1015800	
Unaccounted for cubic feet	4192800	
		54239200
Average candle power...		17.2
Average daily amount of gas sent out cubic feet.....		148600
Per cent. of gas unaccounted for.....		7.7
Unaccounted for gas per mile of main per year cu. ft...		157877
Amount of gas sold per mile of main cubic feet.....		1710400
Amount of gas sold per meter per year " "		20193

2064 Coal:

Carbonized pounds (15972½ tons)		31945064
Gas made per pound of coal		4.96
Maximum number of benches in use		7
Minimum " " " " "		2
Average number of benches in use		5.3
Maximum amount of gas made in one day cu. ft. 12/20/01		684400
Minimum amount of gas made in one day cu. ft. 7/13/01		106500
Average amount of gas made per day		434118

Coke:

Total amount made pounds (incl'g 1237070# breeze)		24107424
Amount used under retorts pounds	4458108	
Amount used under boilers pounds	1279270	
Available for sale pounds	18370046	
		24053424
Per cent. of coke used to cake made		17.2
Amount made per ton of coal carbonized pounds		1505
Amount available for sale per ton of coal carbonized lbs.		1146

Bench fuel:

Amount of coke used under retorts pounds	4458108	
Amount of coal used under retorts pounds	1656600	
		6114708

Boiler fuel:

Amount of coke breeze used under boilers pounds	1279270	
Amount of coal used under boilers pounds	2538600	
		3817870

Tar:

Amount made total gallons	200607
Amount made per ton of coal carbonized gallons	12.56

2064½ Ammonia:

Amount made total pounds	686943
Amount made per ton of coal carbonized pounds	4.30

Meters:

In use September 1, 1901	2293
Set during year	496
Removed during year	441
In use August 31, 1902	2348

Mains.	Sept. 1, 1901.	Laid in year.	Removed in year.	Aug. 31, 1902.
2 inch...	260	570	.....	830
4 "	80852	3243	1254	82841
6 "	12874	93	48	12919
8 "	20229	2391	.....	22620
10 "	3482	.....	.....	3482
12 "	20768	.....	.....	20768
16 "	1758	1125	.....	2883
Total...	140223	7422 or 27.72 miles.	1302	146343

Services:

Laid September 1, 1901.....	2515
Laid during year.....	138
Removed during year.....	5
Laid August 31, 1902.....	2648

Gas stoves:

New stoves connected during year.....	170
Old stoves connected during year.....	253

Water heaters:

New water heaters connected during year.....	3
Old water heaters connected during year.....	7

2065 Direct examination of F. W. LITTLE resumed by Mr. Abbott:

70. What has been the price of Youghiogheny coal f. o. b. cars on the side tracks in Peoria during the period from September 1, 1901, to September 1, 1902?

Objected to as incompetent, improper and not proper rebuttal.

The MASTER: Answer subject to the objection.

A. The price of Youghiogheny coal during the period mentioned has varied between $2.80 per net ton and $3.65 per net ton; the last quotation I had and the last purchase of coal I made was at the price of $3.65 per ton delivered on cars in Peoria, which was a few weeks ago.

71. At what price have you charged Youghiogheny coal in the figures presented by you pertaining to the cost of the manufacture of gas as shown in Exhibits "43 and 44"?

Objected to same grounds as before.

A. In September, 1901, $2.66 4/10; in October $2.67 1/10; in November $2.69; in December $2.70; in January, 1902, $2.86 8/10 in February $2.86; in March $2.86; in April $2.94 7/10; in May $2.91 7/10; in June $2.94 4/10; in July $3.12; in August $3.20. These prices represent the cost of the coal to the company delivered in the coal shed including the cost of unloading from the cars to the coal shed; during all this time, a portion of the coal used was received under contracts ranging from $2.65 f. o. b. cars to $3.65 f. o. b. cars, which explains the variation in the monthly figures.

72. Is that the reason also why you have been unable to charge the cost of Youghiogheny coal in making up your statements at less than the actual market price of such coal for any given month?

(Objected to same grounds.)

A. Yes sir; the tendency of the market has been a rising one and each month some portion of previous contracts has
2066 lapped over.

73. If you have not already stated you may now state what proportion of the working capital required by complainant company is used in carrying Youghiogheny coal in the manner stated?

Objected to same grounds as before.

A. From one half to two thirds of the working capital has been required to carry coal stock.

74. Where the cost of Youghiogheny coal used by complainant company appears in the record to be $2.80 per ton, state whether that price is f. o. b. cars or covers the labor of unloading the cars, etc.?

(Objected to same grounds as before.)

A. That is f. o. b. cars as a general proposition.

75. Have you read the testimony of the witnesses, Frederick Egner and Thomas Littlehale, as given in this case?

Ans. Yes sir.

76. Do you know "Exhibit 20" which was used as the basis in the interrogatories propounded to such witnesses?

Ans. Yes sir.

77. What is "Exhibit 20"?

A. It purports to be a copy of a record kept at the works of the Peoria Gas & Electric Company by the superintendent, showing the cost of gas up to the outlet of the benches.

78. State whether that is a complete record of the cost of all labor and material entering into the manufacture of gas to the time of its being put into the holder of the company?

Objected to as incompetent, improper, immaterial, not proper rebuttal, as the exhibit in question was offered in chief.

The MASTER: The witness may answer subject to the objection.

A. No, it is not a complete record.

79. State whether in the actual manufacture of gas by complainant company other items of labor or cost outside of those shown in "Exhibit 20" necessarily enter into the cost of the production
2067 of gas by complainant company during the period covered by "Exhibit 20" and what other, if any?

Objected to as immaterial and incompetent. (Same ruling.)

A. The exhibit in question does not take into account the salary of the superintendent of manufacture at $125. per month, which enters into the cost of the gas at the works; one half of the storekeeper's salary which is charged to the manufacture of gas, the storekeeper receives $60. per month and $30. per month of his salary should be charged to the cost of the gas at the works; one day engineer who receives $60. per month; one day foreman and helper in the boiler and condenser rooms who receives $50. per month; one night engineer who receives $55. per month, and an average of three yard men engaged in handling coke, cleaning purifyers, dumping drips, and other work about the yards at $50. per month each, making a total of $470. per month additional labor. The exhibit in question does not cover the expense of general repairs around the works which varies in amount and which would aggregate, perhaps, from $1000. to $1500 per year under present conditions—possibly more.

80. State whether or not in your opinion as an expert and a practical gas man, as well as from your experience in the management of complainant's plant, all of the items you have now enumerated necessarily enter into the cost of the manufacture of gas in addition to those items which appear in "Exhibit 20"?

A. Yes sir, they all do and I should add that "Exhibit 20" does not include another necessary expense, which is the resetting and refilling of benches; the retorts will last probably two years and will cost from $600. to $650. per bench for refilling and that in addition is a necessary expense to be taken into account.

2068 81. Do you regard it as either feasible or practicable to have the retort house men attend to these various items of labor which you have testified to as necessary outside of "Exhibit 20"—is such a method feasible or practicable in the ordinary operation of a gas plant?

A. No sir, not under ordinary conditions and certainly not under the conditions existing in Peoria; the boilers, ammonia apparatus, engines, exhausters, condensers and scrubbers are entirely separate from the retort house, and the retort house men cannot possibly look after that portion of the apparatus. I regard the employment of a superintendent of manufacture and a store keeper as necessary also to the economical operation of a plant.

82. Does "Exhibit 20" contain any allowance for taxes on the manufacturing plant?

A. No sir, it does not.

83. In your judgment and experience, is the item of taxes on a

manufacturing plant a proper and necessary item to be taken into consideration in determining the cost of manufacturing gas.

The MASTER: You need not prove that; the master will take judicial notice of the fact that it is.

A. Yes sir, in this connection, I want to say that under the system of accounting which we use, and which is coming into general use, the taxes and general expenses are not charged direct to the cost of manufacture; that came from a practice adopted a good many years ago of sub-dividing the expenditures by a gas company under three heading, viz: manufacture, distribution and repairs; under the old system one half of the general expenses were charged to manufacture—I mean by that, the salaries of officers, taxes and items of that sort, were charged to manufacture and the other half to distribution. In our accounts we do not adopt that method but classify all of those items under the general head of "Ex-
2069 pense" and do not charge them to the manufacturing cost of the gas. Under the system adopted by Mr. Egner in his estimate of cost half of the taxes should be charged to manufacturing.

84. Did you also note the testimony of the witness Egner with reference to his estimate of the cost of distribution of gas in the city of Peoria?

A. Yes sir, I have examined it quite carefully.

85. State what necessary items, if any, from your experience as a gas man, were omitted by the witness Egner in his estimate of the cost of distribution of gas in the city of Peoria as shown by his testimony in this case?

Objected to as incompetent, improper, immaterial and not the proper method of reaching a question of that character; and further object to the question because it leads to the witness' conclusion with reference to the testimony of Mr. Egner and allows the witness to place an interpretation upon the evidence given by him.

The MASTER: The criticism to your question, Mr. Abbott, in the master's mind is this; you do ask whether those are necessary or not, but I think you ought to go further and show the fact, if it is a fact, that those are expenses incurred and paid by complainant company; there are lots of things necessary to be done in life that are not done.

Mr. ABBOTT: I expect to follow the question up by showing the facts; this is an expert question.

The MASTER: The witness may answer subject to the objection.

A. Mr. Egner made no allowance for the reading of meters which will require labor equal to 28 days at $2.00 per day, amounting to $56. per month, or $672. a year; he makes no allowance for complaint men and men to answer fire alarms and this will
2070 require four men at $60. per month each, and one of the men engaged in this service will require a horse and wagon which

will cost at least $20. a month or $240. a year; these two items will amount to $3120. a year. During the fall, winter and spring, men will be required to look after frost and nap-thaline stoppages in mains, services and meters, and the cost of that will be not less than $1000. a year; meter repairers are not allowed for by Mr. Egner that will require one meter man at $70. a month and two at $45. per month, making a total for labor in that connection of $1920. a year; one half of the storekeepers' wages should be charged to the distribution account at $30. per month or $360. a year; there will be required at least two drivers for the wagons at $45. per month each, or $1080. a year; there will also be required a superintendent of distribution, who will have general charge of the distribution of the gas, his salary will amount to $1200. a year and in addition he should be provided with a horse and buggy which will cost $240. a year more; the manager should also have a stenographer at $60. a month or $720. a year; wear and tear on the horses, buggy and wagon will amount to at least $60. per year—that is merely for the maintenance of them. I consider accident insurance necessary in this department of the business and the premium will amount to about $250. a year. In the summer season it is always necessary to go over the main and service system hunting for leaks, repairing mains and guarding against injury to the main system caused by other contractors putting in sewers, laying water mains, telephone conduits, etc., which will require for not less than seven months out of a year a gang of 5 men under the charge of a foreman: these men should receive $2. per day each and the foreman $3.00 per day, which will amount to $2730. a year; the materials they will use in their work will aggregate $400. to $500. a year; the tools lost
2071 and destroyed in the course of a year's work in the distribution department will amount to not less than $500. a year. The bad bills, that is to say, bills which cannot be collected, will amount to one per cent. of the total aggregate of the bills. I should add for legal expenses and for loss and damage on an average, year by year, about $4000. a year, and put the amount of the bad bills at $1500. *dollars*, that makes the omissions aggregate $19,752., amounting to about 12½ cents per thousand cubic feet on the amount of gas sold under Mr. Egner's estimate.

86. You mean that increases his estimate 12½ cents per thousand cubic feet on the amount of gas sold?

Ans. Yes sir.

87. You may state whether or not all of those items, with reference to which you have testified, necessarily entered into the cost of the distribution of gas in the city of Peoria during the period in question in addition to the items in the estimate of the witness Frederick Egner, as the same appears in the evidence?

Objected to for the same reasons last stated.

The MASTER: The witness may answer subject to the objection.

A. I consider all of these expenses as necessary expense in the dis-

tribution of the amount of gas stated by Mr. Egner under the conditions existing in Peoria during the period mentioned and under ordinary average conditions.

88. In addition to the items in reference to which you have testified, did as a matter of fact all the items testified to by the witness Egner actually go into the distribution?

Objected to same grounds as before. (Same ruling.)

A. To that form of question I should say no. I do not understand Mr. Egner's testimony to be what was done in Peoria but to be in answer to hypothetical questions based upon what he consid-
2072 & 2073 ered to be necessary in a town the size of Peoria under average conditions.

89. Assuming the conditions testified to by Mr. Egner to be correct, you may state whether in your judgment and from your experience the other items, with reference to which you have testified necessarily entered into the cost of the distribution of gas in the city of Peoria during the period in question.

Objected to same grounds as before. (Same ruling.)

A. Yes, sir, in addition to the amount testified to by Mr. Egner.

90. What would you say as an expert generally and having knowledge of conditions in Peoria of the estimate of the witness, Littlehale, as to the cost of the distribution of gas during the period in question?

Objected to same grounds as before stated, applying it to the evidence of Mr. Littlehale. (Same ruling.)

A. Mr. Littlehale's estimate was made in such a general way and in such general terms it is pretty difficult to analyze it and show in detail what he omitted without knowing in detail what he included; the average amount of his estimate in my judgment is far too low.

91. State if you know what has been the average consumption per annum per meter of the Peoria Gas & Electric Company of the gas delivered through its own mains, services and meters to its own consumers during the year from September 1, 1901, to September 1, 1902?

Objected to because the same is already in evidence, appearing in "Exhibit 44," and for the further reason that it is incompetent, immaterial, not proper rebuttal and not the best evidence.

The Master: The witness is asked for a fact and he may state if he knows subject to the objection.

2074 A. Slightly over 20,000 feet per year per meter.

92. What was the consumption per annum per mile of main during the same period and under the same circumstances?

Objected to same grounds.

A. Slightly over 1,700,000 cubic feet per year.

93. On that consumption per annum per meter and per mile of main, please state whether in your opinion, as a gas expert, the output of the Peoria Gas & Electric Company can be materially increased without additional extension of its main system and additional meters?

Objected to as immaterial, incompetent and not proper rebuttal.

The MASTER: I think so, Mr. Abbott.

Mr. ABBOTT: We would like to have the question answered.

The MASTER: The witness may answer subject to the objection.

A. No, I don't think it can be materially increased.

94. In determining the cost of the distribution of gas, what factor is of the greatest importance in determining such cost, the extent of the output or the number of miles of pipe and number of meters through which the gas passes. Explain fully your conclusion in that regard?

Objected to as immaterial, incompetent, not proper rebuttal.

The MASTER: I don't think it proper rebutting testimony but I think it a material and proper inquiry and one on which the master would like to have some information, and the witness may answer subject to the objection.

A. The cost is determined almost entirely by the number of miles of main and by the number of meters in use, and number of services.

95. Explain further how it is true that the number of miles of mains and the number of meters is so important a factor in
2075 the cost of the distribution of gas?

Objected to same grounds as before. (Same ruling.)

A. Labor cost outside of the office and the clerical work inside of the office is determined by the number of miles of mains, the number of services and number of meters which have to be looked after or read and entered on the books of the company; if your consumption is very large per mile of main, the fixed labor charge for looking after that main will be spread over a very much larger unit and very much larger output; if on the other hand your consumption is small per mile of main the same labor cost will be required to look after the mains and similarly with the services, if the service passes a large amount of gas it will not leak any more or be more apt to leak or require more attention than if it is passing a small amount of gas; also with meters, if a meter passes a thousand or fifteen hundred feet of gas per month, it costs no more to read that meter or repair that meter than if it were passing a smaller amount of gas, say 500 or 100 feet per month; the same is true in connection with the office work; it is the number of bills to be gotten out and not the amount of the bills that determine the cost of that work. In other words, within very wide limits these expenses are fixed expenses, irrespective of the quantity of gas sold unless that quantity

is very large or very small per meter or per consumer or per mile of main, as the case may be.

(The MASTER:)

96. Does the leakage cut any important factor in the cost of the distribution of gas?

A. Yes sir, in two ways; it is important because of the loss of the gas itself and it becomes again important because of the cost of the labor required to supervise and keep your main system tight; those are important and necessary expenses.

2076 (The MASTER:)

97. What I refer to is the actual leakage, notwithstanding these precautions, a factor to any considerable amount in the cost of the distribution of gas?

A. Yes sir always.

(Mr. ABBOTT:)

98. Did you note the testimony of the witness Littlehale in regard to the appreciation of an investment in gas properties in a growing town?

Ans. Yes sir.

99. To what extent, if at all, does that appreciation compensate for the depreciation of a plant as has been testified to by yourself and other witnesses in the case?

Objected to as incompetent, improper, immaterial, not a proper method of reaching a question of that character, and for the further reason it allowed this witness to interpret the evidence of Mr. Littlehale and allowed this witness to reach a conclusion with reference to that evidence.

The MASTER: As I recollect Mr. Littlehale's testimony, he stated that the increase in population more than compensated for the depreciation of the plant by reason of the increased consumption of gas. That was the substance of it on that point, was it not?

Mr. ABBOTT: I did not understand it exactly that way.

The MASTER: The witness may answer subject to the objection; I think it competent rebutting testimony, as I remember Mr. Littlehale's evidence?

A. I do not think it compensates for it at all; I do not think there is any such thing; I think there is nothing but inevitable bankruptcy to any company that conducts its business on that theory.

100. Will you state fully your reasons for such a conclusion?

Objected to same grounds (Same ruling.)

A. It is clearly evident to me that street mains, services and

meters and all the property of a gas company must in course
2077 of time be worn out or become antiquated and unfit for further use, and it is equally evident that some provision must be made for the replacement of that apparatus and property when it is worn out. Now, unless that is done as you go along by a proper fund, it means either that the company must go into bankruptcy or it must borrow the money, pledging something it expects to have in the future for a replacement of it, or it must fail in its obligations to supply the public with gas; it seems to me there is no escape from it.

101. Would it not be a fact in that connection that the appreciation of the property, as testified to by the witness Littlehale, as taking place in a growing community would in itself involve an extension of the mains and services commensurate with the growth of the city and an expense in accordance therewith.

Objected to same grounds.

A. There is not the least doubt if the business increases there must be a larger investment to handle it and the appreciation of the property, if there is any, comes wholly from the increased investment of capital in the property. There is only one condition I can think of where there would be any appreciation of that sort and that would be in the case of an exclusive franchise, an exclusive right fixing definitely by contract a rate for gas which could not be reduced and assuming there was no other competition which forced a reduction in prices.

102. Have you a copy of the statement of account rendered by your company to the Peoria Gas Light and Coke Company for gas delivered to it up to the 19th day of August, 1902, and also for the labor and material furnished up to September 1st, 1902, under the contract in evidence marked "Exhibit 32"?

A. Yes sir, they are in the form of three bills.

2078 103. Please hand the same to the master to be marked as an exhibit.

A. I will. (Said three bills are marked by the master "Exhibit 45.")

104. State whether these three bills fastened together which you have produced and had marked "Exhibit 45" were rendered in the course of business in the same manner as the bills for the months preceding, beginning with December 1, 1901, which were furnished by you to counsel for defendant and identified as "Exhibits 33" and offered in evidence by the defendant?

A. Yes sir, these are copies of the bills rendered on September 1, 1902, to the Peoria Gas Light & Coke Company in the usual course of business and under the provisions of the contract marked "Exhibit 32."

Mr. ABBOTT: Now, if the master please, we desire on behalf of the plaintiff to offer these three bills marked "Exhibit 45" in evidence

in connection with similar bills offered by the defendant marked "Exhibit 33" for the purpose of making the record complete as to the entire time covered by the contract marked "Exhibit 33?"

Objected to as not proper rebuttal and incompetent.

The MASTER: The bills may go in evidence subject to the objection.

Whereupon said bills marked "Exhibit 45" were read to the master in the words and figures following, to-wit:

2079. EXHIBIT "45." I. C. Pinkney, Special Master.

("3" sheets.)

PEORIA, ILL., *September* 1, 1902.

Peoria Gas Light & Coke Company, Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

Labor and Material Furnished up to September 1, Not Previously Billed.

	Labor.	Material.	Total.
Removing and setting meters...	37.00	33.50	70.50
Connecting old stoves.....	24.55	34.67	59.22
Caring for complaints.....	90.07	15.37	105.44
Repairing services.....	5.92	1.97	7.89
Repairing meters	54.11	19.13	73.24
Recalk 360 feet 4" pipe on Peoria between Ravine and Nebraska	14.75	.....	14.75
Locate pipes on Glen Oak, etc...	.....	.40	.40
Recalk 22000 feet 4" pipe on Warner Ave.	.....	.60	.60
Rebuild 3-light meters.....	.....	26.92	26.92
	226.40	132.56	358.96

2080 EXHIBIT "45" (Continued).

PEORIA, ILL., *September* 1, 1902.

Peoria Gas Light & Coke Company, Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

Labor and Materials Furnished up to September 1, not Previously Billed.

	Labor.	Material.	Total.
Setting new stoves	35.50	488.82	324.32
Running new services	175.27	165.20	340.47
Extending services for setting met	6.39	21.16	27.55
Setting new meters	.29	33.22	33.51
Lay 407 6" pipe on Saratoga St. to connect Saratoga & Hulburt Sts. mains using "Old Co." pipe		.20	.20
Extend 1763 feet 4" main on Butler St. from Brotherson to Pope	241.85	546.86	788.71
Extend 482 feet 4" main on Johnson St. from Saratoga to Charlton	83.78	175.67	259.45
Lay 420 feet 4" pipe on Virginia Ave. west from Knoxville	80.76	161.95	242.71
Lay 250 feet 4" pipe on Peoria Ave. from end of present main to Neb	61.89	74.55	136.44
Lay 240 feet 6" pipe on E. Neb. from Wisconsin Ave	84.25	19.64	103.89
Material from storeroom for gas plant	7.45	26.50	33.95
Lay 300 feet of 2" main east from Perry on Mound St	52.60	30.01	82.61
Lay 214 feet of 2" main on 800 block Saratoga from Fourth St. Nor	18.47	29.92	48.39
Lay 2" main on Steubenville from McBean	11.88	41.28	53.16
Repair 4" gas main on Oak St. broken by Thompson & Case	15.30		15.30
Material and tools	11.25	1613.13	1624.38
	886.93	3428.11	4315.04

2081 EXHIBIT "45" (Continued).

PEORIA, ILL., *September* 1, 1902.

Peoria Gas Light & Coke Company, Peoria, Illinois, to Peoria Gas and Electric Company, Dr.

104,634,200	c. f. gas delivered as per E. W. E. (26th to 26th) October 1901 to August 1902.	
97,707,700	c. f. total gas paid for.	
6,926,500	c. f. balance unpaid for.	
6,254,600	cu. ft. gas @ 75c	$4690.95
671,900	" " est. leakage at 9.7% @ 50c	335.95
6,926,500	cu. ft.	$5026.90

2082 Mr. ABBOTT: Now, if the master please, at the last hearing we intended to offer a statement of the cost of the plant made to June 30, 1902, similar in character to the one which was offered in the early part of the complainant's case, showing the cost of the plant to September 1, 1901, and to make that more complete we desire to reserve the right to bring that statement down to the day of the close of the taking of evidence and offer it at the same time and under the same conditions as the operating statements, to the close of business on September 30, 1902.

The MASTER: The master will reserve any decision on that until the offer is made; I do not see any objection except it operates as a duplication of the record so far as it includes anything already in evidence as to the cost of the plant.

Mr. ABBOTT: We offer it in an effort to be perfectly fair with the court and master on their ruling that we shall bring this evidence down to the close of the taking of testimony and for no other purpose.

The MASTER: I understand that perfectly but the suggestion occurred to me if there were any additional costs that has been incurred in the manufacturing plant or distribution system, this might be offered. I assume it is an assembling of all the accounts put in concrete form.

Mr. ABBOTT: Yes sir, it is an easier way of getting at it than to ask questions about it.

The MASTER: I do not see any objection to its being put in in that way.

Mr. MANSFIELD: I now move the court on behalf of the defendant to exclude all the foregoing evidence of Mr. Little based upon conclusions obtained by him from an examination of the evidence of Mr. Littlehale and Mr. Egner for the reason that the course
2083 of inquiry was improper and incompetent and was not the proper way of reaching questions of that character; and I

urther object because it necessitated Mr. Little's placing an inter-
retation upon the evidence as offered by Mr. Littlehale and Mr.
Egner.

The MASTER: The motion will be denied so far as the master is
oncerned. The weight to be given to the testimony of any witness
s with the master but the right to exclude testimony is another
roposition.

Adjourned by agreement to meet in the United States court room, Government building, Peoria, Ill., on Friday, September 26, 1902, at 2 o'clock p. m.

2084 United States circuit court room, Government building.

PEORIA, ILL., FRIDAY, *September* 26, 1902—10 a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin, Mr. R. C. Ritcher and Mr. W. T. Abbott, appearing for the complainant. Mr. Henry Mansfield, city att'y, and Mr. F. H. Tichenor, appearing for defendant.

J. M. ROBB, re-called on behalf of complainant, testifies as follows:

Direct interrogatories by Mr. ABBOTT:

1. You are the same J. M. Robb who has previously testified in this case on behalf of both the complainant and defendant?

A. Yes sir;

2. During the period in which the Peoria Gas & Electric Co., was supplying gas to the Peoria Gas-light & Coke Co., under the contract in evidence marked Exhibit "32," state what, if anything, you had to do with the distribution of the Peoria Gas-light & Coke Co.?

Objected to as incompetent, improper and immaterial, not proper rebuttal.

The MASTER: The witness may answer subject to the objection.

A. I was the superintendent of the work of distribution for the Peoria Gas-light & Coke Company, had charge of its mains and service work, removing settings and reading their meters—in fact, all of their distribution work.

3. In the course of such work during said time, state whether or not you became familiar with the extent of the main piping system of the Peoria Gas Light & Coke Co. in the city of Peoria?

Objected to same grounds. Same ruling.

A. Yes sir, I did.

4. What is the present mileage of the mains of the Peoria Gas Light & Coke Co. in the city of Peoria?

2085 Objected to same grounds. Same ruling.

A. Substantially 57 76 / 100 miles.

5. Does that include some mileage, if so, how much, that was put in during the last 6 months?

A. It includes about 8,000 feet that was put in during the past 6 months.

6. State if in a similar way you have familiarized yourself with the number of meters in use by that company during the period in question?

Objected to same grounds. Same ruling.

A. Yes sir, I did.

7. What was the number of meters in use by the Peoria Gas Light & Coke Company, through which it distributed gas to customers during the period of operation under this contract "Exhibit 32"?

A. 4,490 meters and some more, I have forgotten the number over 90.

8. Did the number change to a considerable extent during those months of operation under that contract?

Objected to same grounds. Same ruling.

A. Some additions were made but the number was not materially changed.

9. State whether or not, from your knowledge of the distribution of the distributing system of the Peoria Gas Light & Coke Co. during the period in question, the gas sold and delivered by the Peoria Gas & Electric Co. to the Peoria Gas Light & Coke Co. was sold and delivered by said last named company to its customers through its own piping system and meters, that is, of course deducting for leakage?

Objected to same grounds as before and also as calling for the conclusion of the witness.

2086 The MASTER: No, he asked for his personal knowledge, I think. The witness may answer subject to the objection.

A. Yes sir.

Adjourned subject to call of special commissioner.

Directors' room, Equitable Trust Co., Chicago National Bank bldg.

CHICAGO, ILL.,
THURSDAY, *October* 16, 1902—10 o'clock a. m.

Parties met pursuant to the call of the special commissioner.

Present: Judge I. C. Pinkney, special commissioner. Mr. W. T. Irwin, Mr. R. C. Ritcher and Mr. W. T. Abbott, appearing for complainant. Mr. Henry Mansfield, city attorney, Mr. F. H. Tichenor appearing for defendants.

The MASTER: The master having delayed the hearing of this testimony five days after the period fixed for resuming it by the stipu-

lation last entered into, five days' additional time will be given in which the taking of the testimony shall be closed.

Complainant's counsel offers in evidence and reads to the master a schedule of the prices charged to consumers for gas by the Peoria Gas Light & Coke Co. from 1897 to 1902 inclusive, showing the dates at which changes of prices were made, which said schedule of prices is marked "Exhibit 46" and is in the words and figures following, to-wit:

2086½ *Prices Charged to Consumers by the Peoria Gas Light & Coke Company from* 1897 *to* 1902, *Inclusive.*

Light.	Gross.	Discount.	Net.	Fuel.
1897	$1.35	10 cts. thousand	$1.25	$.75 flat
1898	1.35	" " "	1.25	.75 "
1899	1.35	" " "	1.25	.75 "
1899 (Apr. 1)...	1.00	.....	1.00	.75 "
1900	1.00	.....	1.00	.75 "
1900 (Apr. 1)...	.50	20 " "	.30	.30 net
			Billed	.50
			Discount	.20%
1900 (Aug. 1)...	1.25	10 " "	1.15	.85–10–75 net
1901 (Jan.)...	1.00	.....	1.00	1.00

Exhibit 46. I. C. Pinkney, master.

2087 Direct examination of F. W. LITTLE resumed by Mr. Irwin:

105. On pages 1948 and 1949 of the record is a resolution that was adopted at a meeting of the stockholders of the Peoria Gas & Electric Co. held on the 14th day of June, 1900, requesting the board of directors of the complainant company to declare a stock dividend of $500,000 increase of the capital stock of the corporation among its several stockholders according to their respective holdings. I will ask you if the board of directors ever declared any stock dividend in pursuance of the request of the resolution adopted at the stockholders' meeting referred to?

Objected to as incompetent, improper, immaterial and not proper rebuttal.

The MASTER: The witness may answer subject to the objection.

A. No, they did not.

106. Was any stock dividend ever declared by the board of directors of complainant company among its several stockholders in

pursuance to the resolution referred to or any other resolution to your knowledge?

Objected to same grounds. Same ruling.

A. No.

107. Was there ever any stock dividend declared or issued by the board of directors to the stockholders?

Objected to same grounds as before and also as leading and suggestive. Same ruling.

A. No sir, no stock dividend was ever declared or issued at all.

108. Did the board of directors ever take any action upon the resolution adopted at the stockholders' meeting referred to?

Objected to same grounds. Same ruling.

A. No sir.

2088 109. Have you prepared a statement showing the cost of the manufacture and distribution of gas by the complainant company from September 1, 1902, up to and including September 30, 1902, including the gas manufactured and delivered by complainant company during that period?

Objected to as incompetent, improper, immaterial and not proper rebuttal.

The MASTER: No, it is not offered as rebutting testimony. As I understand it, it is offered in view of the ruling of the court and master and it is incumbent on the complainant to show it.

Mr. ABBOTT: And offered under the stipulation so far as the objection to its competency goes.

The MASTER: It has not been offered yet, the witness is simply asked if he has prepared such a statement.

A. Yes sir, I have prepared a statement showing the cost of gas sold during the period mentioned.

110. Look at the paper marked "Exhibit 47" and state if that is a statement of the cost prepared by you?

A. Yes sir, it is.

111. State what the paper now shown you marked "Exhibit 48" represents?

A. It shows the amount of money expended by the Peoria Gas & Electric Co. in the construction of its gas plant and property *yp* to the close of September 30, 1902.

112. From what source did you obtain the data and information from which the statements marked "Exhibit 47 and 48" were made?

A. From an inspection and examination of the original vouchers of the company showing the payment of the money made for the different purposes shown in the statement.

113. Who made the compilations included in "Exhibits 47 and 48" referred to?

Ans. I did.

2089 114. Are they correct?

Ans. Yes sir.

115. Are the figures showing the respective amounts of money and the amount of raw material, residuals, etc., as shown upon "Exhibit 47" correct according to the compilations as made by you from the original vouchers?

A. Yes sir, they cover all of the expenditures for materials and labor made by the company for operation of the property during the month of September, 1902, excepting such purchases as were made in bulk and where the purchases exceeded the requirements of the company for the month in question. In that case, the materials were charged into the store room and the amount of material left on hand in the store room at the close of the month is not shown in the statement.

115. Is the amount of the material remaining in the store room charged or shown in the figures on "Exhibit 47" representing the cost of the manufacture of gas during that period?

A. No sir, no materials which were left in the store room are considered at all in the statement.

116. Does the statement marked "Exhibit 48" with reference to the cost of the plant—are the different items and amounts respectively as shown upon such exhibit correct?

Ans. Yes sir.

117. Are the vouchers, duplicate vouchers and sub-vouchers showing all expenditures in detail now present in court for examination by the special master and counsel constituting the several items shown upon "Exhibits 47 and 48" referred to?

A. They are all now in the office of the Audit Company of Illinois, room 416, New York Life building, Chicago, and will be brought into court if desired.

118. Will you produce them for the examination of the court or counsel if desired?

Ans. Yes sir.

Mr. RITCHER: I think under the stipulation they ought to

2090 be present and if the master will take a recess for five minutes we will bring them in.

The MASTER: I think that is the technical language of the stipulation and the master will suspend the taking of evidence for a few minutes until they can be brought in.

Mr. TICHENOR: If the master please, we are desirous of doing anything that can be done to expedite matters and we do not want to stand on any technicality if counsel for complainant will show us the same courtesy we can get along rapidly; we will waive this question if they will give us the figures we have asked them to give us.

Mr. RITCHER: We are not asking for any waiver.

The MASTER: I have no knowledge of what you have asked for, Mr. Tichenor.

Mr. TICHENOR: We want the operating statements for the months of September and October, 1901, and for the month of August, 1902.

Mr. RITCHER: That was refused at the last hearing and they were going to Springfield before Judge Humphrey on that point among others and I do not see any occasion for reopening it; we do not ask them to waive this matter; we will bring the vouchers in in a few minutes.

Mr. TICHENOR: I do not see how that could be true because we had not at that time reached the point where we were ready to take testimony at all.

Mr. RITCHER: You did ask for those statements—you asked for the whole year's statement by months.

Mr. TICHENOR: We subsequently waived all that.

Mr. RITCHER: That is what I say and there is no occasion for reopening it.

Mr. IRWIN: If the master please, the vouchers representing the expenditures prior to September 1, 1901, entering into the
2091 cost of the plant as well as those pertaining to the construction and operation of the plant and the cost of manufacturing gas, have been redistributed in their numerical order by the bookkeepers of the Audit Company of Illinois, and it will take some little time to sort them out so as to produce them again in court. The Audit Company's employés are now at work making that assortment and as soon as they can be sorted out will be brought into court.

The MASTER: You now refer to the vouchers and sub-vouchers relative to the plant and its operation at what time?

Mr. IRWIN: Prior to September 1, 1901.

The MASTER: The master will not go into that again.

Mr. RITCHER: Are you ready, Mr. Little, to bring in the vouchers from September 1, 1901, to September 30, 1902, at once?

Mr. LITTLE: Yes sir.

The MASTER: The master will not allow you to go back to matters already closed in this case under any consideration whatever, except upon express directions of the court. If counsel for defendant desires the vouchers and sub-vouchers touching any additional expenditures as shown by "Exhibit 48" with reference to the manufacturing plant, I think they should be produced under the stipulation as well as the vouchers and sub-vouchers relating to the cost of manufacture and distribution of gas for the month of September, 1902, and I think it the duty of complainant to produce them.

Mr. LITTLE: They will be here in a few minutes.

119. What changes have been made in the cost of the manufacturing plant of the complainant company as shown by "Exhibit 48" as compared with "Exhibit 2" heretofore offered in evidence?

Objected to as incompetent, improper, immaterial and not proper rebuttal.

The MASTER: I do not see how it is competent as rebutting
2092 testimony; of course the cost of the manufacture and distribution of gas up to September 30, 1902, has been called for and any additional expenditure on the manufacturing plant might be competent in that respect.

Mr. IRWIN: That is the purpose of the question.

The MASTER: But I think it ought to be limited to such necessary additional expenditures as have been made to the cost of the plant as already shown; if that is the purport of your question, the witness may answer subject to the objection.

A. The question calls for the manufacturing plant only.

Mr. IRWIN: When I refer to the plant I refer to the whole plant both the manufacturing and distributing portions of it.

Mr. TICHENOR: We wish our objection to stand to the question as amended.

A. The land and building account has been reduced by about $11,000. arising from the sale and leasure of real estate below Rye street owned by the company and the main system, meters, services and manufacturing plant have been increased by this amount and also by about $5,000. more, making the total investment about $5,000 more than at the date of the statement marked "Exhibit 2."

120. Where was this real estate you mentioned as having — sold situated and what was its condition as compared with the plant of the complainant company?

A. It was across Rye street from the manufacturing plant of the company and located in St. John's subdivision; it was vacant property used for storage purposes and was separated from the plant of complainant company by Rye street.

121. Are all the vouchers, duplicate vouchers and sub-vouchers showing additional expenditures and changes in the cost of the manufacturing plant as shown by Exhibit "48" now present in court for inspection and examination by the special commis-
2093 sioner and counsel for the respective parties to this suit?

A. Yes sir, including the manufacturing and distributing plant both.

122. Are all of the vouchers, duplicate vouchers and sub-vouchers showing all expenditures in detail now in court for inspection and examination by the special commissioner and counsel for the respective parties showing the expenditures made in the summary contained in "Exhibit 47"?

A. The vouchers are now being gotten together and I cannot answer that until about two o'clock.

123. Can you have the vouchers present in court by the coming in of court after the noon recess for the month of September 1902, as shown by "Exhibit 47"?

Ans. Yes sir.

Mr. IRWIN: We now ask the master to suspend the hearing until two o'clock for those vouchers to be brought in.

The MASTER: No, go on with your examination.

Mr. IRWIN: I want to offer these exhibits in evidence but I think under the stipulation these vouchers have to be in court.

The MASTER: No, I don't think so, you can offer them now.

Mr. IRWIN: I now offer in evidence on behalf of complainant the statement marked "Exhibit 48" referred to and identified by the witness.

Objected to as incompetent, improper, immaterial and not proper rebuttal.

The MASTER: It will be admitted subject to the objection.

Mr. IRWIN: I now offer in evidence on behalf of complainant the statement marked "Exhibit 47" identified by the witness.

Objected to same grounds as to "Exhibit 48."

The MASTER: Under the stipulation of counsel for complainant that the vouchers, duplicate vouchers and sub-vouchers will be produced after the noon recess, the statement will be admitted
2094 subject to the objection.

Whereupon said statements marked Exhibits "47 & 48" were read to the master in the words and figures following, to-wit:

Operating Statement, Month of September, 1902.

Gas sold as per consumers' meters..... 4,089,400 c. f.
Total expenditures as per statement below..... $7230.76

Less value of residuals made:

747,965 lbs. coke	@	$3.25 per ton	1215.44	
69,000 " breeze	@	1.00 " "	34.50	
- - - " retort carbon	@	" "	- - -	
6,111 gals. tar	@	.05 " gal.	505.55	
2242.9 lbs. ammonia	@	.08 " lb	179.42	
				1734.92

Net actual cost without depreciation or interest..... $5515.84

Net cost per thousand cubic feet of gas sold after deducting value of all residuals made..... 1.348 +

Cost per thousand cubic feet of gas sold to consumers of Peoria Gas & Electric Co. after deducting value of all residuals made and including depreciation at 6½% on cost of property excluding cost of real estate and including interest at 10% on cost of property.... 2.794 +

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	208.33	.....	208.33
2	Accounting department	464.75	.....	464.75
3	General office sundries	.....	25.29	25.29
4	Canvassing	68.75	.....	68.75
5	Insurance	.....	24.25	24.25
6	Rentals	.....	49.50	49.50
7	Interest	.....	.....	.....
8	Taxes	.....	637.07	637.07
9	Legal exp., loss & damage	.....	1847.55	1847.55
10	Stationery, ptg. & postage	.....	38.60	38.60
11	Stable expenses	8.01	236.56	244.57
	Manufacturing:			
13	Generator fuel	.....	.....	.....
14	Gas coal	.....	1577.17	1577.17
15	Boiler fuel	.....	89.24	89.24
16	Bench fuel	.....	271.85	271.85
17	Manufacturing labor	856.58	.....	856.58
18	Manufacturing supplies	.....	9.35	9.35
19	Oil	.....	.....	.....
20	Enrichers	.....	15.30	15.30
21	Purification labor	31.80	.....	31.80
22	Purification supplies	.....	.....	.....
	Distribution:			
23	Distribution labor	282.85	.....	282.85
24	Distribution supplies	27.88	52.05	79.93
	Miscellaneous:			
26	Msel. supplies & expenses	13.98	.....	13.98
	Repairs and renewals:			
27	Repairs & renewals meters	34.90	15.01	49.91
28	Repairs & renewals serv's	6.21	25.69	31.90
29	Bench repairs	44.37	27.33	71.70
30	Gas house & mach'y rprs.	132.81	127.73	260.54
31	Repairs & renewals mains	.....	.....	.....
		2181.22	5069.54	7250.76

Exhibits "47" I. C. Pinkney, master.

2095 EXHIBIT "48." I. C. Pinkney, Master.

Cost of Gas Plant and Property of Peoria Gas & Electric Company as at September 30th, 1902.

Acct.		Labor.	Material.	Totals.	
1	Salaries of officers	7740.90		7740.90	
2	Accounting department	6549.46		6549.46	
3	General office sundries		1903.33	1903.33	
4	Canvassing		581.35	581.35	
5	Insurance				
6	Rentals		1230.00	1230.00	
7	Interest		16546.58	16546.58	
8	Taxes		1228.92	1228.92	
9	Legal exp., loss & damages	2213.92		2213.92	
10	Stationery, ptg. & postg		1723.83	1723.83	
11	Stable expenses		2252.52	2200.52	
	General expenses	16504.28	25414.53		41918.81
13	Generator fuel				
14	Gas coal	997.65	684.34	1681.99	
15	Boiler fuel	85.40	218.23	303.63	
16	Bench fuel	70.50	742.23	812.73	
17	Manufacturing labor	1129.32		1129.32	
18	Manufacturing supplies				
19	Oil				
20	Enrichers	18.75	294.92	313.67	
21	Purification labor	385.45		385.45	
22	Purification supplies	206.67	834.94	1141.61	
	Manufacturing	2893.74	2874.66		5768.40
23	Distribution labor	366.25	2.20	368.45	
24	Distribution supplies	20.58	289.42	310.00	
	Distribution	386.83	291.62		678.45
26	Mscl. supplies & expenses		112.17	112.17	
	Miscellaneous		112.17		112.17
32	Land & buildings	10830.72	77088.62	87919.34	
	Plant	10830.72	77088.62		87919.34
33	Extension of mains	43759.85	83954.08	127713.93	
30	Manufacturing plant	15737.06	90728.40	106465.48	
35	New meters	3219.46	15055.48	18272.94	
36	New services	18812.94	23179.09	41992.03	
37	Tools		5716.45	5716.45	
38	Furniture & fixtures		3167.57	3167.57	
	Additions to property	81529.31	221799.07		303328.38
	Total				439725.55

2096 Cross interrogatories by Mr. TICHENOR:

1. What was the total of account No. 1, salaries of officers, for the month of September, 1901?

Objected to as not cross examination.

The MASTER: He may answer subject to the objection.

A. I cannot tell you.

2. Have you any data or memorandum or source of information from which you will be able to reply to the interrogatory propounded?

A. I have nothing in my personal possession from which I could give you the information.

3. Is there anything in the possession of your company that will furnish such information?

Ans. Yes sir.

4. In what form is it and where is it?

A. It is in the form of vouchers in the office of the Audit Company of Illinois where the accounts are kept.

5. Does it appear there in an aggregate item or in separate items composing all the different vouchers for that particular month?

A. I think it appears in two or possibly three vouchers.

6. Is it not true that your accounts each month are assembled under the respective headings to which they belong and summarized and do not your accounts show summaries of the various items for the several months?

Objected to as incompetent, immaterial and not cross examination.

The MASTER: The witness may answer subject to the objection.

A. Yes sir.

7. Then it is possible, is it not for you to state from those accounts the total for the month of September under item No. 1, salaries of officers after having refreshed your recollection by reference to the proper source of authority?

Objected to same grounds. Same ruling.

2096½ A. Well, to state definite and positively just what has been the expense it would be necessary for me to refer to the original vouchers; to state what somebody else has done in the assembling of those accounts would be another matter that I could do.

8. Is it not true that your system of book-keeping is of such a character that any error occurring in the accounting department would be detected by you in the regular performance of your duties as general manager?

Objected to same grounds. Same ruling.

A. No, that is not part of my duty as general manager of the

company; I could do it by making a thorough audit of the accounts of the company and could detect an error if one existed; but that is not part of my regular work.

9. Do you know whether or not the accounting of the complainant company is correctly kept by the Audit Company of Illinois?

Objected to same grounds. Same ruling.

A. As a general proposition it is; I think the accounting there is no more subject to error than is ordinarily the case.

10. During the time you have been associated with complainant company, state whether or not you have discovered any errors in the accounting department.

Objected to same grounds. Same ruling.

A. Yes, I have discovered some errors there.

11. Where were those errors made?

Objected to same grounds. Same ruling.

A. In the office of the Audit Company.

12. How frequently have those errors been made?

Objected to same grounds. Same ruling.

A. I think only a few times.

13. Who made the discovery that those errors had been committed?

Objected to same grounds. Same ruling.

2097 A. My answer is only as to errors which I myself have personally discovered.

14. In what way did you discover them?

Objected to same grounds. Same ruling.

A. By checking through and examining the accounts and comparing them with the vouchers.

15. Was that in your preparation of material for use in this particular case?

Objected to same grounds. Same ruling.

A. A part of the errors in question were and some were not.

16. Is the work of the company in charge of your accounts audited from time to time?

Mr. ABBOTT: We would like to have the same objection noted to all of these questions relating to the details of the bookkeeping as it was all covered thoroughly by counsel for defendant when this witness was on the stand as their witness and nothing was asked him on his direct examination in rebuttal to which these questions either directly or indirectly or by inference could refer. The witness was also cross examined on the mode and character of the book-

keeping thoroughly on his original examination when on the stand in chief.

The MASTER: I am admitting this evidence on the assumption that it relates to matters that have arisen since September 1, 1901, up to the present time.

Mr. ABBOTT: Then it ought to be confined to that time.

Mr. TICHENOR: That was my intention but perhaps I have not stated it with sufficient clearness; it has reference only to those matters now before us.

17. Did the errors to which you have referred occur in the accounts for the period commencing September 1, 1901, and ending August 31, 1902?

2098 Objected to same grounds. Same ruling.

A. Some of the errors occurred during that period.

18. Has there been any general checking and auditing of the accounts of your company as kept by the Audit Company of Illinois for the period last referred to?

Objected to same grounds; objection overruled.

A. Well, there is a checking of their accounts each month by the auditor of the company and I think the treasurer checks them, but as I said, it is not part of my duty to make such a general checking excepting as I went over the vouchers and accounts generally in connection with this case.

19. Are the examinations and auditings to which you have just referred the only ones required by the management of your company?

Objected to same grounds. Same ruling.

A. Yes, the only ones I know of.

20. Are all of the various accounts of your company entering into the annual statements ending with August 31, 1902, assembled and cumulative in the same manner you have testified with reference to item No. 1?

(Objected to same grounds. Same ruling.)

A. In a general way, yes sir.

21. Is it also true that those several summaries from month to month appear upon the books of your company?

Objected to same grounds. Same ruling.

A. Yes sir;

22. Will you make an examination of those accounts for the purpose of ascertaining what those several summaries are for the months of September and October 1901, and August 1902, and be prepared to testify to them on the convening of court this afternoon?

Objected to as incompetent, immaterial and not cross-examination

and for the further reason it does not appear the items in question are in the proper custody of this witness; and also because
2099 the witness has testified that he would have to testify to somebody else's work if he testified concerning them.

The MASTER: The question is only whether he could do it or not and he may answer that.

A. I could not do it by the convening of court this afternoon.

23. How much time would be required to enable you to prepare yourself to answer the question?

Objected to same grounds.

The MASTER: I think he may state how much time it would take.

A. To give you the total amounts charged to the various accounts would necessitate an examination of the vouchers and also all of the storeroom reports and a separation of the electric from the gas accounts and that would take a considerable period of time, I could not say just how long; it would take several days to do it.

24. Is it not true that the items for the separate month corresponding to those appearing in Exhibit "43," are shown in totals in your books of account for the gas department only?

Objected to same grounds. (Admitted subject to objection.)

A. No. If you will refer to my original testimony on the question of the method of keeping the accounts you will see just what I made reference to now as to the time required to get at that I think I testified—in fact, I have a clear recollection of testifying, as to the manner of keeping those accounts, beginning with the voucher register where all accounts, gas and electric, are registered; then the transfer of those into the ledger, which covers merely the cash expenditures of the month; then the storeroom reports which show what material had been received into the store room and what has been charged out to the gas department; the general books kept of the store room account covers both the gas and electric department and to get at what goes out of the gas storeroom to the gas department necessitates an examination of the original supply
2100 tickets and requisitions for material showing what is charged; those are not finally assembled until they reach the general ledger of the company—there is no summarizing of them until they reach the general ledger.

25. Is it not true they are there assembled and summarized by months?

(Objected to same grounds. Same ruling.)

A. There is no balance struck each month for the various accounts; the account is carried by them all to the close of the fiscal year. Account No. 1, for illustration, starts with the beginning of the year and to see how much was charged each month would necessi-

tate a separation of the items charged in that month to that account, the balance carried right on; the account is not closed until the close of the fiscal year.

26. Then it would necessitate a substraction from month to month in order to determine—Interru pted——

A. Addition and substraction both.

27. Do you take off a trial balance each month?

Objected to same grounds as before. Same ruling.

A. I do not; I presume the accountants do.

28. Is it not true that the trial balance shows the totals of all the various items entering into your accounting which you have arranged under 31 heads?

Objected to same grounds. Same ruling.

A. The trial balance shows the totals of these accounts from the beginning of the fiscal year up to the period when it is taken off.

29. But not for a month?

Ans. Not for a month.

30. Are all of the vouchers for the month of September entering into your annual operating statement Exhibit "43" in court at the present time?

A. (Witness examining vouchers.) I think they are all here; I find the summaries are here of the storekeepers' reports and I see
2101 some supply tickets are here, and if they are here all are here.

31. Is the same thing true with regard to the vouchers for October 1901?

Ans. Yes sir;

32. Is it also true with regard to the vouchers for the month of August 1902?

Ans. Yes sir;

33. As those vouchers now are is there any separation of them as to months for the period covered by your annual statement ending August 31, 1902?

Ans. No sir;

34. Are they in such shape you can readily separate them for the months concerning which you have been examined, viz: September and October 1901, and August 1902?

Ans. Yes sir; I think so.

35. In a general way how many vouchers are there for each of those three months?

A. My recollection is there are 1050 vouchers spread over a year and probably a fair and equal division for each month would be probably about 100 original and 100 duplicates for each month.

36. Those you refer to as duplicates are strictly duplicate vouchers, are they?

Ans. Yes sir;

(Recess until 2 o'clock p. m.)

Interrogatories by Mr. IRWIN:

Q. Are the vouchers, duplicate vouchers and sub-vouchers showing all expenditures in detail of the cost of the manufacture and delivery of gas from September 1, 1901, to September 30, 1902, now present in court for the examination of the special master and counsel?

Ans. Yes sir;

Q. Does the statement marked Exhibit "47" contain a true and correct compilation as taken by you from the vouchers to which you have referred?

Ans. Yes sir;

Mr. IRWIN: Complainant now renews the offer of Exhibit "47" in evidence.

The MASTER: It is already in evidence; it is not necessary
2102 to offer it again.

(Vouchers, duplicate vouchers and sub-vouchers referred to presented and examined by counsel for defendant.)

Cross-interrogatories by Mr. TICHENOR, resuming:

37. State whether or not an account is kept by your company by the month of all material passing through your storeroom and appearing in what you have referred to as a storeroom account?

A. Yes sir; there is an account.

The MASTER: This inquiry is limited is it, Mr. Tichenor, to cover this period?

Mr. TICHENOR: Yes sir. I will state that our examination upon these vouchers is limited to the months of September and October 1901, and the month of August 1902.

38. Will you state the manner in which your storeroom account is kept and when with reference to each month that is made up doing so as briefly as you can?

A. Nearly all materials, which are purchased for the company are charged to the storeroom account when the invoices are received this is the rule and the only exception to it is in the case of some small office supplies or things of that sort; an invoice when received at the office of the company in Peoria goes to the storeroom office and is checked with the original order on which the goods were bought and entered in the storekeeper's books, then stamped with his stamp, and signed by him and returned to me after which it is approved by me and forwarded to the treasurer's office in Chicago the charges to the storeroom are made on the vouchers and the vouchers are made up by assembling the various invoices which have come in during the month—the invoices being made up beween the 10th, and 20th, of the following month as the checks are mailed and the voucher sent out the duplicate voucher is retained and a charge to the storeroom

and for that matter, to any other account is made on
2103 the back of the voucher at that time, those charges being made on the back of the duplicate vouchers; at the expiration of each month the storekeeper makes up a series of journal entries and a statement of the account; these are based upon requisitions made on the storekeeper for materials signed by the heads of the different departments; these requisitions are attached to the journal entries and form a part of them; in addition the storekeeper makes a general summary of all charges, which as a rule are summaries of the various journal entries made out by him, and also makes a statement showing the condition of his storeroom. That is to say, the amount of property on hand at the beginning of the month, amount received during the month, any labor which may have been put upon articles in the storeroom during the month, the amount issued during the month and the amount on hand at the close of the month. These various journal entries and reports are attached together and from them the bookkeeper in the office of the Audit Company makes up a final journal entry which is entered on the journal of the company. I think I make it clear that the material as a rule, unless the invoice shows on its face it is to be charged directly to some account, all passes through the storeroom, and the storekeeper's reports with the accompanying requisitions shows what goes out of the storeroom, and what should be charged to the operating account or construction account for that particular month.

39. Will you state what requisitions were made on your storekeeper for the month of September 1901, detailing in items, and as you advance, state the account to which each of those several items was charged, making your reply as brief as possible?

A. A requisition was made on him in September 1901, for 24675 lbs. of coke and 1500 lbs. cannel coal which was charged by him to account No. 13, aggregating $42 87. Another requisition was made on him for 915,941 lbs. of Youghiogheny gas coal which was
2104 charged by him to "gas and coal account" No. 14, aggregating $1220.03. Another requisition was made on him for 87,200 lbs. of screenings and 41,400 lbs. of breeze which was charged by him to "boiler fuel account" No. 15, aggregating $62.95. Another requisition was made on him for 190,635 lbs. of coke which was charged by him to "bench fuel acct." No. 16, aggregating $313.40. Another requisition was made on him for 198 galls. of gasoline which was charged by him to "enrichers acct." No. 20, aggregating $25.74. Another requisition was made on him for 564,100 lbs. of coke sold, which was charged to "sales acct." No. 40 aggregating $1400.73. Another requisition was made on him for 321,600 lbs. of coke, which was charged by him to "sales acct." No. 40 aggregating $563.86. Another requisition was made for manufacturing supplies which was charged to account No. 18, aggregating $47.24. Another requisition was made for miscel-aneous supplies and expenses which was charged to account No. 26, aggregating $16.11. Another requisition was made

for meter repair parts, aggregating $6.33 and was charged to account No. 27. Another requisition was made for materials used in gas house machinery repairs, charged to acct. No. 30, aggregating $8.09. Another requisition was made for material used in the extension of mains, charged to acct. No. 33, aggregating $50.26. Another requisition was made for material used in the manufacturing plant, charged to the manufacturing plant acct. No. 34, aggregating $192.45. Another requisition was made for meters placed in the houses of consumers and was charged to acct. No. 35, aggregating $117.16. Another requisition was made for material used in connection with new services, which was charged to account No. 36, aggregating $89.08. Another requisition was made for tools and implements which was charged to account No. 37, aggregating $4.45. That covers all of the materials issued out of the storeroom in the gas department during September 1901.

40. What is your reason for charging the coke in the same manner you make other charges out of the storeroom
2105 account—explain briefly the foundation for that charge?

A. The entire amount of coal produced in any month. In fact, the entire amount of all residuals produced in any month, is charged into the storeroom at the close of the month; the amount which is used in the heating of benches, or other operation of the plant, is then charged with its proper amount and the storeroom gets credit at the end of the month. This is done for the purpose of showing through general accounts of the company just what residuals are produced each month and what are used each month in the operations of the company.

41. Can you state the different quantities of the various residuals charged into the storeroom during the month of September 1901 That is, I mean produced?

A. Not here. I did not bring into court the statements or journal entries showing charges to the storeroom; I can secure them, however.

42. You have them separated for each month?

Ans. Yes sir;

43. Can you state the various items entering into your operating statement for the month of September 1901, so far as they appear in the vouchers of your company for that month?

A. The only way I could do that would be to take the various vouchers, classify them, and add the amounts together for each account number. In other words, there may be a number of vouchers charged to account- Nos. 1, 2 or 3, as the case may be; I would have to take those and make up a statement—compilation from the vouchers.

44. You have before you vouchers representing all of those expenditures for the month of September 1901?

A. Yes sir; I think I have all of the vouchers here representing expenditures for the month of September 1901.

45. Do those various vouchers show the different accounts to which they were charged at the time?

2106 A. Yes sir, although by reason of the storeroom system, which I have explained, the original vouchers may charge certain articles to the storeroom—to ascertain what amount was issued out of the storeroom I should have to turn to the storeroom reports, which I have here, and which are with those vouchers.

46. Are those the reports concerning which you have just testified?

A. Yes sir. As a foundation for the store room reports and as constituting the original entry, a supply ticket is produced in this form (handing supply ticket to counsel) working order number, account number, requsition from the foreman to deliver this material, and the store keeper's report that he has delivered it—the amount of it—the amount of each particular item.

47. That is all embodied in the material you have already given?

A. Yes sir, that is summarized in the material for the month of September.

48. Will you state what items of expenditures enters into your operating account for the month of September, 1901, other than those to which you have already referred; detailing the items and the different account numbers to which they are charged?

A. Do you care to have the names of the parties to whom the payments were made?

49. No sir, simply the amounts and the account.

A. Do you care for the voucher number?

50. No.

A. Legal expenses account No. 9, $176.10, salaries of officers, account No. 1, $150—Interrupted.

The MASTER: Before going further, is this examination for the purpose of testing the accuracy of the books from which these statements marked "Exhibits 47 and 48" are taken?

2107 Mr. TICHENOR: No sir.

The MASTER: What is the purpose of it?

Mr. TICHENOR: To show what the operating statements for September and October, 1901, were separately.

Mr. RITCHER: The complainant objects to this evidence because it was put in under the stipulation and is not cross examination.

The MASTER: If the purpose of this is to ascertain the correctness of the statements marked "Exhibits 47 and 48" and the correctness of the sources from which these statements were compiled, it is unquestionably cross examination, but if it is an attempt to go into the expenditures connected with the manufacture and cost of the distribution of gas, then I think under the stipulation it is not proper.

Mr. RITCHER: That is my understanding exactly.

Mr. TICHENOR: What stipulation does the master refer to?

The MASTER: The stipulation on page 139 of the record; the purpose of that stipulation as I understood it was to save incumbering the record and simply allow inquiry to be made concerning any vouchers the correctness of which were challenged. I have already ruled in this case that I regarded that stipulation as binding on all such matters up to the time of the close of the taking of this testimony; but understand me, if this is offered for the purpose of testing the witness's knowledge of the accuracy of the sources from which "Exhibits 47 and 48" is compiled I think it entirely proper. I will be glad to hear from you Mr. Tichenor.

Mr. TICHENOR: Probably the suggestion of the master covers all I want to say; I think it cross examination.

The MASTER: I think it proper as cross examination for the purpose I have already indicated but I do not see how it is competent under that stipulation if it is gone into for any other purpose.

2108 Mr. TICHENOR: We do not understand that stipulation has anything whatever to do with any matters subsequent to September 1, 1901.

The MASTER: As I have already ruled on that, I think it was a stipulation that was designed to cover, and should be held to cover inquiry along that line during the whole period covered by the operation of this plant up to the time of the close of the taking of evidence.

Mr. TICHENOR: But if the master please, from what was done on the other side, it is clearly apparent that ruling had not been adhered to, because another stipulation was made in Chicago the other day to cover certain specific ground, that is to obviate the necessity of putting in the vouchers from which "Exhibits 47 and 48" are compiled.

Mr. RITCHER: That stipulation was simply made to reaffirm the former stipulation under the master's ruling.

Mr. TICHENOR: It certainly was a new stipulation, although it might have been an enlargement of the preceding stipulation for the purpose of making it applicable to the present case.

The MASTER: Do you refer to the stipulation made at the hotel one evening?

Mr. TICHENOR: I do not remember when it was made but it was with reference to this same question. Counsel for complainant were going to bring in the original vouchers and then a stipulation was made in reference to them.

Mr. RITCHER: It was simply reaffirming the old stipulation; we were going to Springfield to see Judge Humphrey about it to find out whether the master's ruling was right, that the old stipulation was in force.

Mr. IRWIN: We simply wanted to know whether the master and court would take the same view as to the old stipulation.

2109 Mr. RITCHER: The only reason the old stipulation was not specifically mentioned was that it was not necessary, as the only purpose of the last stipulation was to extend the time for in-

troducing these statements, and when the counsel for defendant withdrew their objection as to the competency of the statements, the ruling of the master was affirmed. That was the only reason we did not go to Springfield.

Mr. TICHENOR: If they had put in that material as the other had been put in, this line of examination would have been entirely unnecessary, I presume, assuming it was accurately done.

Mr. MANSFIELD: These two monthly statements become very material in the view we take of the case and they have offered them in evidence as a summary and I think we have a right to find out on cross examination what was paid out during the month of September and October.

Mr. RITCHER: The defendant has put in their side of the case and tried to show what was the amount manufactured, etc., and they should have put this in then, they cannot do it now.

Mr. MANSFIELD: We have a right to cross examine on the evidence submitted to the master.

Mr. IRWIN: Yes, but this is not a cross examination of the witness; if there are any vouchers during these months you want to contest; you have a right to cross examine him on them.

Mr. TICHENOR: The witness has testified these statements are based upon these vouchers compiled by himself from an examination of them all.

The MASTER: Yes, I have that in mind.

Mr. TICHENOR: Now, it certainly is competent for us to examine him with reference to any or all of these vouchers if we see fit on cross examination, commencing at the beginning and going through to the end of the year.

2110 Mr. RITCHER: There would be some sense in that but there cannot be any sense in examining him as to a part unless they want to challenge the accuracy of such vouchers.

Mr. MANSFIELD: You don't know what we are going to do in regard to it.

Mr. RITCHER: I think I know.

Mr. MANSFIELD: Before we get through with the witness, we may go through all of them, but we have a right to select what months we desire.

Mr. RITCHER: If you are going through all of them, there is some sense in that and I can see that you have a right to do that if you challenge the accuracy of the statements.

Mr. MANSFIELD: There are other statements made by Mr. Little in his testimony covering these very months and we have a right to go into the vouchers on which these exhibits and his testimony has been based.

The MASTER: As a matter of cross examination only; I have already indicated you have that right.

Mr. TICHENOR: We tried once before to examine Mr. Little on certain matters and the master ruled we were out of order because they were open to us on our former cross examination of the wit-

ness, now we are making them a matter of cross examination and we do not feel we can be shut off because they are such.

The MASTER: I have tried to make myself clear to counsel. If this line of examination is made for the purpose of testing the accuracy of "Exhibits 47 and 48" as to the summary therein given, it is unquestionably proper cross examination and the master is not inclined to limit you to any particular month or any particular time so long as it is confined within the period of a year preceding September 30, 1902; in other words, going back to September 1, 1901.

2111 Mr. TICHENOR: That is within the period covered by their examination of this witness and we think we are not limited on cross examination to one specific purpose; we have a right to go into any and all questions their examination has opened up and that certainly covers any field properly filled by the vouchers themselves.

Mr. RITCHER: You have no right to put in the vouchers for the stipulation was made for the purpose of avoiding that.

Mr. TICHENOR: We are not putting in the vouchers.

Mr. RITCHER: You are doing what we started out to do and stipulated to avoid.

The MASTER: If you want to pursue that course on the defense you may proceed; the master has already indicated his views on the matter and I shall not exclude the testimony if you want to take that course.

Mr. TICHENOR: We want the testimony.

The MASTER: But I want you to understand the master's attitude in the matter; it is competent for the purpose of testing the witness's knowledge of the accuracy of "Exhibits 47 and 48" and testing the accuracy of the sources from which those exhibits were compiled.

Mr. TICHENOR: We are insisting, as we have already stated, that we have a right to examine the witness upon these vouchers for any and all purposes and that we are not limited to one particular line of inquiry or for the purpose of proving or disproving any particular line.

Mr. MANSFIELD: It is especially referred to in the stipulation that the vouchers shall remain in the court room until all the evidence is submitted in this case for the purpose of having the same examined by the attorneys and the master; how can we make any argument upon the accounts for September and October, 1901, unless we know what those accounts are? If we wanted to make an

2112 argument on them we could go to the vouchers and argue upon that basis but what would the court know about it? The evidence would not be in the record and the court could not tell whether what we said was true or not.

Mr. RITCHER: You made a stipulation which is in the record.

Mr. MANSFIELD: We claim that the evidence we are now putting in comes within the stipulation.

Mr. IRWIN: You have a right to make whatever compilations you desire from the vouchers and put it in evidence if you want to.

The MASTER: Proceed Mr. Little with your answer.

The WITNESS, resuming: To account No. 2, $104.17; to account No. 3, $7.67; to account No. 2, $25.; to account No. 3, $3.04; to account No. 10, $10.25; to account No. 23, $25.; to account No. 9, $68.

Let me explain here that I am not detailing any charges to the store room for the reason that the charges for the store room are sufficient to give the operating expenses; if I gave you the charges for the store room all you could do would be to carry the balance forward from the previous month and strike a balance, which would not help this case any.

51. In other words, the items you are now giving constitutes the material that you used in making up your operating statement and is made up in exactly the same way?

Ans. Yes sir.

52. That is exactly what I want.

A. To account No. 2, $30.; to account No. 11, $2.91; to account No. 17, $267.72; to account No. 21, $32.23; to account No. 23, $45.69; to account No. 24, $21.73; to account No. 26, $10.50; to account No. 27, $15.71; to account No. 30, $12.59; to account No. 1, $100.; to account No. 2, $225.; to account No. 4, $65.; to account No. 11, $3.18; to account No. 17, $303.25; to account No. 21, $4.80; to account No. 23, $77.91; to account No. 24, $13.27; to account No. 26, $1.95; to account No. 27, $6.00; to account No. 30, $2.25; to account No. 11, $16.96; to account No. 11, $.25; to account
2113 No. 11, $.25; to account No. 11, $3.90; to account No. 11, $39.50; to account No. 2, $10.; to account No. 10, $6.00; to account No. 4, $65.; to account No. 11, $2.25; to account No. 11, $21.56; to account No. 5, $144.; to account No. 3, $2.; to account No. 11, $3.20; to account No. 3, $4.50. To these charges which I have read should be added the charges from the gas store room which I previously read.

53. Have you now covered completely the items for the month of September, 1901, included in the operating statement?

A. I have covered the correct charges in connection with the operation of the company during September, 1901, excepting the proportionate share of the taxes; I do not recall in running through these vouchers a voucher covering rental (Witness examining vouchers) There is no charge for rentals I see on examination of the vouchers.

54. Can you tell the amount of gas produced by your company in the month of September, 1901?

Objected to as not cross examination, not proper under the stipulation.

The MASTER: He may answer subject to the objection.

A. I have not the information here.

54. Can you tell the amount of coke produced in the month of September, 1901?

Objected to same grounds. Same ruling.

A. I have not that information with me.

55. Have you with you your sales account for the same month?

Objected to same grounds. Same ruling.

A. No sir, I have not.

56. Where is the material covering the last three questions?

Objected to same grounds. Same ruling.

A. The information covering the residuals produced is in the office of the Audit Company of Illinois; the information as to the amount of gas made and sold is in the office of the company in Peoria.

2114 57. Have you also in the office at Peoria the account of sales for that month?

Objected to same grounds. Same ruling.

A. Do you refer to gas sales?

58. No, sales of residuals.

A. Yes sir. I do not, however, take into account in any of these statements the amount of residuals sold.

59. No, I understand that. What items do you include in account No. 9?

A. Legal expenses and loss and damage; that includes all legal expenses, compensation of attorneys and their expenses, or the expenses of any nature connected purely with litigation; loss and damage includes the expenses incident to damage claims against the company, based on personal injuries or damages of any nature for which the company is liable.

60. Would that include property losses as well as personal injury?

A. Yes sir, as a general proposition but that would be subject to some exceptions. For illustration, an explosion blowing up a meter, that meter would be charged to meter repairs and would not go into the loss and damage account.

61. In the month of September, 1901, was there any expenditures except purely for legal services?

A. I cannot answer that off-hand, I don't remember.

62. Are you able to state whether or not your company had any personal injury claims adjusted during that month?

A. I don't remember definitely; I remember of settling a claim about that time, two claims, in fact, but whether they were in August, September or October, I could not say.

63. Will you now give us the expenditures for the month of October, 1901, treating it in the same manner you did those of

2115 the preceding month and if you can conveniently do so you may take first your store-room account, as you did before?

A. In the store room there was charged, to account No. 11, $70.81; to account No. 14, $2,184.57; to account No. 15, $118.72; to account No. 16, $633.89; to account No. 18, $25.69; to account No. 20, $21.; to account No. 24, $57.82; to account No. 27, $1.20; to account No. 29, $13.71; to account No. 30, $45.14. The above accounts cover the materials issued out of the store room for the month of October, 1901.

The following expenditures are in addition: To account No. 2, $25.; to account No. 3, $6.; to account No. 4, $8.; to account No. 6, $152.50; to account No. 10, $5.; to account No. 11, $1.60; to account No. 23, $25.; to account No. 9, $18.

64. What was that item in account No. 9 for?

A. That was expenses of a trip made by myself from Peoria to Chicago on September 26 and 27, 1901; it was not charged out, however, until October.

There was charged to account No. 1, $150.; to account No. 2, $104.17; to account No. 2, $23.15; to account No. 3, $3.07; to account No. 10, $5.; to account No. 4, $2.50; to account No. 10, $24.02; to account No. 9, $75.

65. What was that item?

A. That was a bill of W. T. Irwin for services in connection with tax matters, appearing before the board of review.

To account No. 2, $35.; to account No. 11, $5.; to account No. 17, $310.57; to account No. 21, $5.20; to account No. 23, $59.81; to account No. 24, $21.06; to account No. 26, $8.32; to account No. 27, $11.32; to account No. 29, $9.50; to account No. 30, $36.07; to account No. 31, $4.29; to account No. 2, $216.25; to account No. 4, $65.; to account No. 11, $5.65; to account No. 17, $556.64; to account No. 21, $23.03; to account No. 23, $171.49; to account
2116 No. 24, $14.95; to account No. 26, $13.65; to account No. 27, $5.25; to account No. 29, $6.30; to account No. 30, $43.; to account No. 31, $.54; to account No. 10, $225.21; to account No. 6, $3.50; to account No. 9, $253.15; to account No. 3, $7.; to account No. 10, $1.40; to account No. 3, $.84; to account No. 10, $10.; to account No. 2, $5.; to account No. 9, $25.;

66. What is that for?

A. That is a bill of the National Surety Company for premium on bond given in this case.

To account No. 10, $53.87; to account No. 10, $9.50; to account No. 10, $19.25; to account No. 3, $.15.

These items cover the expenditures for the month of October, 1901.

67. Will you now take the month of November, 1901, and treat it in the same way.

A. For operating expenses in the month of November, 1901, there was charged out of the store room; To account No. 11, $21.20; to account No. 14, $4,634.80; to account No. 15, $171.02; to account No. 16, $984.54; to account No. 18, $3.73; to account No. 20, $37.46;

to account No. 24, $37.64; to account No. 27, $.48; to account No. 28, $3.13; to account No. 30, $87.54.

In addition there were charged to account No. 1, $150.; to account No. 3, $104.17; to account No. 3, $1.97; to account No. 9, $628.25.

68. What was that for?

A. A bill of Ritcher, Montgomery and Hart for services in connection with the suit of The Peoria Gas & Electric Company *versus* City of Peoria—this case.

To account No. 2, $25.30; to account No. 3, $2.35; to account No. 4, $3.; to account No. 10, $7.35; to account No. 23, $25.; to account No. 9, $29.86; to account No. 2, $43.92; to account No. 11, $5.; to account No. 17, $750.77; to account No. 21, $2.90; to account
2117 No. 23, $73.54; to account No. 24, $20.50; to account No. 26, $18.05; to account No. 27, $5.57; to account No. 28, $1.10; to account No. 29, $2.; to account No. 30, $49.57; to account No. 2, $259.51; to account No. 4, $65.; to account No. 11, $8.88; to account No. 17, $896.18; to account No. 20, $1.; to account No. 21, $24.10; to account No. 23, $191.87; to account No. 24, $16.30; to account No. 26, $72.; to account No. 27, $6.49; to account No. 28, $8.73; to account No. 29, $.40; to account No. 30 $6.86; to account No. 3, $1.10; to account No. 3, $1.20; to account No. 6, $6.; to account No. 3, $3.50; to account No. 10, $3.38; to account No. 10, $20.23; to account No. 10, $30.; to account No. 3, $2.50; to account No. 3, $20.50.

69. You have now finished the month of November, 1901, have you?

A. Yes sir.

70. Will you please take up the month of December, 1901, and treat it in the same way.

A. For the month of December, 1901, materials were issued from the store room and charged to account No. 3, $7.26; to account No. 11, $356.95; to account No. 14, $5,608.98; to account No. 15, $285.78; to account No. 16, $1,069.21; to account No. 18, $21.85; to account No. 23, $4.; to account No. 24, $48.53; to account No. 27, $.50; to account No. 30, $37.04.

In addition there were charged to account No. 3, $97.; to account No. 10, $5.; to account No. 11, $185.; to account No. 9, $1,501.85.

71. Of what does that consist?

A. Of the fees of the master and the witnesses and traveling expenses in connection with taking testimony in this case.

To account No. 2, $104.17; to account No. 1, $150; to account No. 3, $4.04; to account No. 9, $534.85.

72. What is that item for?

A. A bill of Ritcher, Montgomery and Hart for services and expenses in this case.

2118 To account No. 3, $2.; to account No. 6, $8; to account No. 9, $571.20.

73. What was that for?

A. The fees of the master and fees and expenses of a witness in this case.

To account No. 2, $38.33; to account No. 11, $8.17; to account No. 17, $835.58; to account No. 21, $18.20; to account No. 23, $111.86; to account No. 24, $15.32; to account No. 26, $9.45; to account No. 27, $9.62; to account No. 29, $2.; to account No. 30, $19.54; to account No. 2, $241.72; to account No. 4, $65.; to account No. 11, $6.86; to account No. 17, $961.50; to account No. 21, $16.75; to account No. 23, $171.52; to account No. 24, $19.06; to account No. 26, $7.29; to account No. 27, $12.; to account No. 30, $43.15; to account No. 3, $3.30; to account No. 6, $8.73; to account No. 9, $10.70.

74. What was that for?

A. It was an item for telephone charges—long distance telephone service.

To account No. 26, $63,06; to account No. 9, $1,963.80.

75. What was that item?

A. Attorney and witness fees and expenses in this case.

To account No. 3, $.54; to account No. 10, $9.75; to account No. 9, $2.; to account No. 9, $3.; to account No. 3, $.30; to account No. 3, $15.; to account No. 9, $63.

76. What was that for?

A. That was for a light of plate glass broken at 420 Main street.

To account No. 3, $4.75; to account No. 6, $75.; to account No. 10, $5.40; to account No. 9, $623.83.

77. What was that item?

A. Expenses of witnesses and traveling expenses in connection with this case.

78. You have now finished the month of December, 1901, have you?

2119 A. Yes sir.

79. Please take the month of January, 1902, and treat it in the same manner.

A. In January, 1902, there was charged out from the store room for materials used in the operation of the plant: to account No. 3, $21.09; to account No. 11, $11.31; to account No. 14, $4,980.10; to account No. 15, $363.17; to account No. 16, $975.82; to account No. 18, $25.81; to account No. 23, $11.24; to account No. 24, $19.54; to account No. 27, $6.38; to account No. 28, $1.87; to account No. 30, $19.92; to account No. 31, $1.83.

In addition there was charged:—to account No. 6, $7.75; to account No. 3, $21.70; to account No. 4, $4.83; to account No. 10, $10; to account No. 6, $25.; to account No. 23, $13.; to account No. 2, $48.09; to account No. 11, $6.86; to account No. 17, $845.87; to account No. 21, $27.85 to account No. 23, $104.86; to account No. 24, $15 44; to account No. 26, $4.50; to account No. 27, $4.45; to account No. 28, $1.85; to account No. 30, $19.89; to account No. 3, $14.77; to account No. 2, $104.17; to account No. 1, $208.33; to account No. 9, $248.40.

80. What was that for?

A. Services and expenses of attorneys in this case.

To account No. 2, $242.35; to account No. 4, $65.; to account No. 11, $8.20; to account No. 17, $917.20; to account No. 21, $35.30; to account No. 23, $138.25; to account No. 24, $15.02; to account No. 26, $25.32; to account No. 27, $2.95; to account No. 28, $11.27; to account No. 30, $17.72; to account No. 31, $5.05; to account No. 3, $.30; to account No. 10, $.45; to account No. 23, $17.; to account No. 9, $12.

81. What was that for?

A. Expenses in connection with this suit.

To account No. 3, $46.17; to account No. 10, $10.; to account No. 3, $2.; to account No. 10, $14.87; to account No. 3, $1.60; to account No. 3, $1.05; to account No. 10, $.35; to account No. 9, $23.44.

2120 82. What was that for?

A. Services of the Equitable Trust Company.

83. You have now finished the vouchers with reference to the month of January, 1902, have you?

Ans. Yes sir.

84. Please take the month of February, 1902, and treat it in the same manner.

A. Covering material issued from the store room for the month of February, 1902, there was charged:—to account No. 3, $22.63; to account No. 11, $320.48; to account No. 14, $4,411.91; to account No. 15, $289.21; to account No. 16, $908.13; to account No. 18, $21.33; to account No. 24, $27.64; to account No. 27, $8.95; to account No. 28, $5.72; to account No. 30, $46.29; to account No. 31, $3.98.

In addition there was charged:—to account No. 3, $3.80; to account No. 3, $1.25; to account No. 3, $7.92; to account No. 10, $12.75; to account No. 9, $354.50.

85. What was that item for?

A. Attorneys' fees and expenses in this case.

To account No. 10, $9.; to account No. 3, $1.30; to account No. 9, $3.; to account No. 10, $16.25; to account No. 3, $12.25; to account No. 10, $2.50; to account No. 3, $3.94; to account No. 9, $215.40.

86. What is that item, please?

A. It is for an abstract of the record in this case.

To account No. 6, $7.75; to account No. 3, $8.65; to account No. 4, $1.; to account No. 6, $25.; to account No. 9, $384.33.

87. What is that item?

A. It is principally fees in this case together with the expenses of the stenographer; it is all that except a dollar paid to the secretary of state and one or two other items.

To account No. 2, $45.43; to account No. 11, $8.04; to account No. 17, $1,053.50; to account No. 21, $10.80; to account No. 23, $102.58; to account No. 24, $11.05; to account No. 26,
2121 $10.85; to account No. 27, $6.78; to account No. 28, $1.42; to account No. 29, $5.37; to account No. 30, $54.53; to ac-

count No. 1, $208.33; to account No. 2, $104.17; to account No. 3, $1.05; to account No. 2, $3.25; to account No. 10, $5.; to account No. 9, $362.35.

88. What is that, please?

A. That is a bill for attorneys' fees and expenses in connection with this case.

To account No. 2, $268.72; to account No. 4, $65; to account No. 11, $5; to account No. 17, $729.07; to account No. 21, $38.50; to account No. 23, $141.59; to account No. 24, $11.98; to account No. 26, $19.17; to account No. 27, $.25; to account No. 28, $3.46; to account No. 29, $.90; to account No. 30, $26.25; That finishes the month of February, 1902.

Adjourned by agreement until Friday, October, 17, 1902, at 9:30 a. m.

Directors' room, Equitable Trust Co., Chicago National Bank bldg.

CHICAGO, ILLINOIS,
FRIDAY, *October* 17, 1902—9:30 o'clock a. m.

Parties met pursuant to adjournment.
Present: Same as before.

Cross-examination of F. W. LITTLE resumed by Mr. Tichenor:

89. Please take the month of March, 1902, and treat it in the same manner.

A. In March, 1902, the materials issued out of the store room were charged:—to account No. 3, $11.14; to account No. 11, $380.63; to account No. 14, $4,572.43; to account No. 15, $188.95; to account No. 16, $920.07; to account No. 18, $14.25; to account No. 20, $9 21; to account No. 22, $394.22; to account No. 23, $4.; to account No. 24, $46.33; to account No. 26, $28.60; to account No. 27, 2122 $.30; to account No. 28, $1.26; to account No. 30, $63.52.

In addition there was charged: to account No. 10, $38.91; to account No. 10, $70; to account No. 10, $6.30; to account No. 9, $197.26.

90. What was that for?

A. $172.75 of that amount was for attorneys' fees in this suit and $24.51 was for commissions on the collection of a claim against a scrap iron firm.

To account No. 10, $.50; to account No. 3, $2.86; to account No. 10, $1.50; to account No. 2, $270.74; to account No. 4, $65.; to account No. 11, $7.16; to account No. 17, $748.48; to account No. 21, $80.32; to account No. 23, $122.13; to account No. 24, $18.65; to account No. 26, $19.26; to account No. 27, $2.09; to account No. 28, $6.34; to account No. 29, $3.25; to account No. 30, $9.49; to account No. 3, $3.60; to account No. 6, $7.75; to account No. 2, $52.46; to account No. 11, $12.30; to account No. 17, $830.97; to account

No. 21, $52.85; to account No. 23, $117.06; to account No. 24, $10.33 to account No. 26, $28.17; to account No. 27, $1.13; to account No 29, $3.38; to account No. 30, $35.63; to account No. 1, $208.33; to account No. 2, $104.17; to account No. 3, $2.40; to account No. 3 $1.85; to account No. 6, $25.; to account No. 10, $1.15; to account No. 9, $230.05.

91. What was that for?

A. Fees of two doctors and the hospital fee in caring for Albert Kupford who was burned to death by gas including also the undertaker's bills.

To account No. 3, $20.74; to account No. 4, $12.50; to account No. 9, $119.60.

92. What was that for?

A. That was for traveling expenses and witness fees in this case. To account No. 3, $3; to account No. 3, $12.85; to account No. 9, $414.20.

93. What was that for?

A. $15. of it was for fees appearing before the coroner's
2123 inquest and drawing release in the case of Albert Kupford; the remainder was attorneys' fees and expenses in this case.

To account No. 10, $3.78; to account No. 3, $5.; to account No. 3, $11.; to account No. 3, $.60. That finishes the month of March, 1902.

94. Now take the vouchers for April, 1902, and treat them in the same way?

A. In April, 1902, there was charged for materials and labor issued out of the store room:—to account No. 4, $95.15; to account No. 11, $178.36; to account No. 14, $4,097.52; to account No. 15, $148.65; to account No. 16, $438.60; to account No. 23, $5.96; to account No. 24, $40.19; to account No. 26, $34.; to account No. 27, $1.65; to account No. 28, $21.30; to account No. 29, $9.49; to account No. 30, $22.90.

In addition there was charged:—to account No. 6, $7.75; to account No. 3, $3.; to account No. 4, $14.; to account No. 6, $25.; to account No. 9, $369.

95. What was that for?

A. $100. of it was a settlement of a claim against the company arising out of the death of Thomas Condon; $100. of it was in settlement of a claim arising out of the death of Patrick Goggin; the remainder is the stenographer's bill of expenses in this case.

To account No. 2, $54.35; to account No. 11, $6.85; to account No. 17, $677.79; to account No. 21, $47.76; to account No. 23, $99.75; to account No. 24, $16.58; to account No. 26, $15.75; to account No. 27, $4.83; to account No. 28, $11.40; to account No. 29, $2.92; to account No. 30, $20.35; to account No. 1, $208.33; to account No. 2, $104.17; to account No. 3, $3.60; to account No. 9, $290.50.

96. What was that for?

A. Attorneys' fees and expenses in this case. To account No. 2,

$281.45; to account No. 4, $65.; to account No. 11, $13.; to account No. 17, $695.50; to account No. 21, $46.30; to account No. 23, $127.67; to account No. 24, $16.22; to account No. 26, $31.30; to account No. 27, $9.50; to account No. 28, $12 57; to account No. 30, $15.42; to account No. 3, $4.25; to account No. 6, $1.50; to account No. 9, $7.63; to account No. 3, $3.68; to account No. 9, $30.

2124

97. What was that for?

A. That was my expenses on a trip to Chicago April 23, 24, 25, 1902.

To account No. 10, $2.87; to account No. 3, $2.75; to account No. 10, $4.50; to account No. 10, $6.10; to account No. 3, $.30; to account No. 3, $3.35; to account No. 10, $4.; to account No. 10, $45.50; to account No. 3, $2.20; to account No. 3, $.50. That finishes the month of April, 1902.

98. Will you please take up the month of May, 1902, and treat that in the same manner.

A. For the month of May, 1902, there was issued out of the store room materials charged: to account No. 4, $59.53; to account No. 11, $165.51; to account No. 14, $3,837.61; to account No. 15, $131.35; to account No. 16, $391.10; to account No. 18, $17.45; to account No. 23, $12.28; to account No. 24, $58.06; to account No. 26, $27.18; to account No. 27, $.55; to account No. 28, $40.46; to account No. 29, $47.14; to account No. 30, $88.58; to account No. 31, $.53.

In addition there was charged: to account No. 9, $492.75.

99. What was that item for?

A. Attorneys' fees and expenses in this case, $342.75; attorneys' fees in general examination of the decisions of Illinois and other States in the matter of the right of one city council to bind another, $150.

To account No. 1, $208.33; to account No. 2, $104.17; to account No. 3, $64.87; to account No. 2, $56.45; to account No. 4, $8.66; to account No. 11, $5.05; to account No. 17, $694.68; to account No. 21, $15.75; to account No. 23, $127.51; to account No. 24, $16.60; to account No. 26, $36.22; to account No. 27, $6.; to account No. 28, $7.92; to account No. 29, $11.92.; to account No. 30, $33.40; to account No. 2, $288.25; to account No. 4, $67.95; to account No. 11, $4.80; to account No. 17, $709.68; to account No. 21, $33.27; to account No. 23, $132.21; to account No. 24, $12.14; to account No. 26, $17.09; to account No. 27, $1.95; to account No. 28, $2.17; to account No. 30, $18.76; to account No. 31, $90.63; to account No. 10, $6.65; to account No. 3, $10.12; to account No. 4, $1.; to account No. 6, $25.; to account No. 9, $5.75; to account No. 10, $20.75; to account No. 23, $17.; to account No. 9, $388.55.

2125

100. What was that for?

A. All excepting $28.55 was for attorneys' fees and expenses in this case.

To account No. 3, $4.60; to account No. 10, $.70; to account No. 3, $12.45; to account No. 6, $8.91; to account No. 9, $2. That finishes the month of May, 1902.

101. Will you please treat the vouchers for the month of June, 1902, in the same manner.

A. In the month of June, 1902, there was issued from the store room material charged:—to account No. 4, $244.90; to account No. 11, $117.89; to account No. 14, $4,185.93; to account No. 15, $163.08; to account No. 16, $513.61; to account No. 18, $8.15; to account No. 23, $5.48; to account No. 24, $55.73; to account No. 26, $16.75; to account No. 27, $4.44; to account No. 28, $18.58; to account No. 30, $65.06.

In addition there was charged:—to account No. 2, $297.59; to account No. 4, $65.58; to account No. 11, $4.95; to account No. 17, $709.91; to account No. 21, $68.17; to account No. 23, $136.95; to account No. 24, $9.24; to account No. 26, $2.70; to account No. 27, $14.44; to account No. 28, $11.70; to account No. 30, $35.43; to account No. 3, $15.89; to account No. 9, $775.94.

102. What was that for, please?

A. It is the fees of the master and stenographer in this case.

2126 To account No. 3, $3.58; to account No. 10, $.80; to account No. 3, $2.28; to account No. 10, $8.36; to account No. 10, $25.50; to account No. 3, $4.50; to account No. 10, $.25; to account No. 3, $1.75; to account No. 3, $.60; to account No. 10, $6.30; to account No. 10, $12.75; to account No. 10, $1.50; to account No. 3, $.85; to account No. 3, $1.35; to account No. 10, $1.15; to account No. 4, $.75; to account No. 3, $6.45; to account No. 3, $.15; to account No. 9, $235.45.

103. What is that for?

A. All excepting $154.20 is for attorneys' fees and expenses in this case; the remainder is for examining abstracts of title, drawing instruments, etc., in connection with the sale of a piece of property—the property concerning which I testified yesterday.

To account No. 10, $31.52; to account No. 9, $236.75.

104. What was that for?

A. Attorneys' fees and expenses in this case.

To account No. 2, $104.17; to account No. 3, $10.52; to account No. 1 $208.33; to account No. 2, $57.50; to account No. 4, $6.92; to account No. 11, $5.84; to account No. 17, $676.12; to account No. 21, $38.33; to account No. 23, $112.75; to account No. 24, $9.29; to account No. 26, $12.75; to account No. 27, $12.85; to account No. 28, $1.35; to account No. 30, $46.72; to account No. 4, $26.; to account No. 3, $5.25; to account No. 6, $35.15; to account No. 9, $57.50.

105. What was that for?

A. That was my personal expenses on two trips to Chicago. That covers the month of June, 1902.

106. Will you now please read the month of July, 1902, in the same manner?

A. In the month of July, 1902, there was charged for material

issued out of the store room :—to account No. 4, $100.; to account No. 11, $232.93; to account No. 14, $4,007.80; to account No. 15, $169.53; to account No. 16, $672.51; to account No. 18, $52.92;
2127 to account No. 23, $13.86; to account No. 24, $31.29; to account No. 26, $89.50; to account No. 27, $5.85; to account No. 28, $15.24; to account No. 30, $112.62; to account No. 31, $.10.

In addition there was charged :—To account No. 2, $104.17; to account No. 1, $208.33; to account No. 2, $57.50; to account No. 11, $4.; to account No. 17, $684.02; to account No. 23, $128.55; to account No. 24, $19.25; to account No. 26, $6.; to account No. 27, $3.40; to account No. 28, $1.50; to account No. 30, $38.57; to account No. 2, $10.; to account No. 3, $10.95; to account No. 4, $6.; to account No. 6, $25.; to account No. 10, $15.80; to account No. 23, $50.; to account No. 3, $2.84; to account No. 2, $305:; to account No. 4, $68.20; to account No. 11, $4.02; to account No. 17, $696.80; to account No. 21, $33.50; to account No. 23, $150.49; to account No. 24, $10; to account No. 26, $1.75; to account No. 27, $14.05; to account No. 29, $4.75; to account No. 30, $5.12; to account No. 9, $100.

107. What was that for?

A. Fees and expenses in this case.

To account No. 3, $1.30; to account No. 10, $4.30; to account No. 3, $46.87; to account No. 9, $117.50.

108. What was that for?

A. Fees and expenses in this case.

To account No. 10, $32.25; to account No. 10, $4.75; to account No. 4, $7.; to account No. 10, $5.; to account No. 10, $14.35. I believe that is all for July.

109. Please treat the month of August, 1902, in the same way.

A. In the month of August, 1902, there was issued from the store room materials charged :—To account No. —, $100.; to account No 11, $242.36; to account No. 14, $3,403.68; to account No. 15, $106.33; to account No. 16, $547.37; to account No. 18, $29.66; to account No. 23, $3.28; to account No. 24, $68.99; to account No. 26, $25.56; to account No. 27, $3.02; to account No. 28, $14.79; to account No. 30, $832.36.

2128 In addition there was charged :—To account No. 3, $9.45; to account No. 10, $1.50; to account No. 9, $467.80.

110. What was that for?

A. All excepting $54. was for attorneys' fees and expenses in this case.

To account No. 10, $9.75; to account No. 10, $9.50; to account No. 9, $331.80.

111. What was that for?

A. Attorneys' fees and expenses in this case.

To account No. 10, $18.20; to account No. 3, $7.50; to account No. 4, $8.; to account No. 6, $15.15; to account No. 9, $51.

112. What was that, please?

A. Traveling expenses for myself. To account No. 2, $57.50; to

account No. 11, $3.40; to account No. 17, $789.91; to account No. 21, $24.65; to account No. 23, $121.22; to account No. 24, $17.46; to account No. 26, $2.20; to account No. 27, $12.53; to account No. 28, $2.93; to account No. 30, $24.85; to account No. 1, $208.33; to account No. 2, $104.17; to account No. 3, $11.94; to account No. 9, $92.89.

113. What was that for?

A. Services and expenses of a witness in connection with this case.

To account No. 2, $305.; to account No. 4, $65.; to account No. 11, $3.55; to account No. 17, $680.17; to account No. 23, $119.51; to account No. 24, $13.26; to account No. 26, $5.75; to account No. 27, $6.21; to account No. 28, $1.; to account No. 30, $7.37; to account No. 31, $3.08; to account No. 3, $11.05; to account No. 4, $1.; to account No. 6, $36.90; to account No. 9, $24.

114. What is that item?

A. Traveling expenses of myself.

To account No. 10, $15.60; to account No. 23, $25.; to account No. 3, $10.02; to account No. 10, $58.; I believe that covers the month of August, 1902.

2129 115. Please take the month of September, 1902, and t-ear it in the same way.

A. In the month of September, 1902, there was charged for materials issued out of the store room:—To account No. 11, $236.56; to account No. 14, $1,577.17; to account No. 15, $89.24; to account No. 16, $271.85; to account No. 18, $9.35; to account No. 20, $15.30; to account No. 24, $52.05; to account No. 27, $15.01; to account No. 28, $25.69; to account No. 29, $27.33; to account No. 30, $127.73;

In addition there was charged:—To account No. 2, $56.40; to account No. 11, $3.50; to account No. 17, $476.37; to account No. 23, $107.26; to account No. 24, $10.21; to account No. 26, $7.; to account No. 27, $23.02; to account No. 28, $1.36; to account No. 30, $85.48; to account No. 1, $208.33; to account No. 3, $3.31; to account No. 3, $.10; to account No. 10, $.25; to account No. 6, $12.; to account No. 2, $104.62; to account No. 2, $303.73; to account No. 4, $66.75; to account No. 11, $4.51; to account No. 17, $380.21; to account No. 21, $31.80; to account No. 23, $125.59; to account No. 24, $17.67; to account No. 26, $6.98; to account No. 27, $11.88; to account No. 28, $4.85; to account No. 29, $44.37; to account No. 30, $47.33; to account No. 3, $8.23; to account No. 4, $2.; to account No. 6, $37.50; to account No. 9, $460.50.

116. What was that please?

A. All excepting $54.50 of it is for fees and expenses in connection with this case; the $54.50 is for certified copies from the city clerk, frontage petition and ordinance and traveling expenses. To account No. 3, $3.75; to account No. 10, $5.30; to account No. 10, $7.; to account No. 3, $3.50; to account No. 9, $840.80.

117. What is that for?

A. Attorneys' fees and expenses in connection with this case. To account No. 10, $5.50; to account No. 9, $545.75.

118. What is that for?

A. Attorneys' fees and expenses in connection with this case.
2130 To account No. 3, $5.50; to account No. 3, $.90. I believe that is all for September, 1902.

Mr. RITCHER: The complainant moves to strike out all of the testimony of Mr. Little with reference to these vouchers as incompetent and improper under the stipulation in this case.

119. I asked you yesterday with reference to *where* the account of gas produced, residuals manufactured, and sales account of residuals for the period beginning September 1, 1901, and extending to September 30, 1902. I understood you to testify that those matters, except as to the account of residuals produced, are in the Peoria office and that the account of residuals is in the Chicago office. Is my understanding correct?

A. The account of all of those matters is in the Peoria office and also in the Chicago office as to the amount of residuals produced in each month.

120. In making up the annual statement, concerning which you have testified, marked "Exhibit 43," in what manner did you arrive at the quantity of residuals shown by the statement?

A. The statement shows the amount of residuals produced and those figures were arrived at by careful computation made by myself from the original books of entry at the office of the Peoria Gas & Electric Co. situated at the gas works at Peoria.

121. Are you prepared to testify as to the extent of variation in quant-y of residuals produced from month to month or from one part of the year to another?

A. No sir, not now.

122. Is the proportion between the coal carbonized and residuals produced comparatively constant or variable?

A. Comparatively constant; the ammonia varies more or less in a month but the percentage of coke made to coal carbonized and the number of gallons of tar produced per ton of coal carbonized
2131 runs nearly uniform.

123. Are you able to state the reason for the variation in the quantity of ammonia produced?

A. Yes sir, it comes in our works from two causes; one is the fact that the absorber of the ammonia apparatus was eaten out by the action of the acids and had to be replaced and for several months the amount of ammonia ran down and another cause is occasioned by a change of engineers; a new man is very apt not to watch his apparatus carefully enough and the production of ammonia decreases.

124. What proportion does the cost of material and labor used by your company in the manufacture and distribution of gas in the city of Peoria bear to the total cost as heretofore given by you?

Objected to as incompetent.

A. I do not quite understand your question; the statement which I prepared shows the material and labor separately and shows just how much was spent for material and how much for labor.

125. In asking the question, I thought perhaps you might have made computation for the purpose of ascertaining that, not especially with reference to this case but in your studies as a gas man.

A. That varies very materially during the different months of the year and under different conditions; there are certain of the expenses that are variable with the output within certain limits and other of the expenses that are fixed and are irrespective of the out put; so no rule that I know of can be formulated in that way.

The MASTER: I want to say to counsel that this question was put by defendant's counsel at the request of the master; I think the fact may be deducible from the record in this case but I thought if the witness had personal knowledge of that fact from his long intimacy with the business it would aid the master in determining that question which is material in this case.

2132 The WITNESS: I want to add to my testimony what I think I made clear yesterday, that these vouchers read by me do not cover the taxes and insurance, or rather the *pro rata* share of taxes and insurance for any month.

Adjourned by agreement to meet in Peoria at such place as may be designated by the special master on Monday, October 20, 1902, at 10 o'clock a. m.

2133 City attorney's office, room No. 209, city hall.

PEORIA, ILL., MONDAY, *October* 20, 1902—10 o'clock a. m.

Parties met pursuant to adjournment.

Present: Judge I. C. Pinkney, special commissioner; Mr. W. T. Irwin and Mr. W. T. Abbott appearing for compl'nt; Mr. Henry Mansfield, city attorney, and Mr. F. H. Tichenor appearing for defendant.

Cross examination of F. W. LITTLE resumed by Mr. Tichenor:

126. Are you now prepared to testify as to the gas made and gas sold each month during the year commencing September 1, 1901?

A. Yes sir.

127. You may state those quantities by months, separating them into the two parts of made and sold, as you proceed.

Objected to as immaterial and not cross examination.

The MASTER: The witness may answer subject to the objection.

A. The gas made in each of the months was as follows:—In September, 1901, 4,388,100 feet; in October, 7,895,500 feet; in November, 17,359,800 feet; in December 18,848,400 feet; in January, 1902,

17,379,400 feet; in February, 15,370,100 feet; in March, 15,575,300 feet; in April, 13,722,400 feet; in May, 12,993,000 feet; in June, 13,154,300 feet; in July, 12,101,100 feet; in August, 9,670,800 feet. A portion of the gas which I have stated was made in November, 1901, was actually made in October, 1901, and was all put into the November account for convenience in accounting.

The gas sold in each month was as follows:—In September, 1901, 4,186,200 feet; in October, 4,691,400 feet; in November, 4,294,900 feet; and also 13,066,200 feet was sold to the Peoria Gas Light & Coke Co.; in December, 4,351,600 feet, and also 13,177,000 feet sold to the Peoria Gas Light & Coke Co.; in January, 1902, 4,479,400 feet, and also 12,611,400 feet sold to the Peoria Gas Light &
2134 Coke Co.; in February, 3,741,400 feet, and also 12,537,200 feet sold to the Peoria Gas Light & Coke Co.; in March, 3,769,300 feet, and also 9,985,300 feet sold to the Peoria Gas Light & Coke Co.; in April 3,478,700 feet, and also 10,102,300 feet sold to the Peoria Gas Light & Coke Co.; in May, 3,435,300 feet, and also 8,853,800 feet sold to the Peoria Gas Light & Coke Co.; in June, 3,608,000 feet and also 9,024,800 feet sold to the Peoria Gas Light & Coke Co.; in July, 3,753,300 feet, and also 8,349,700 feet sold to the Peoria Gas Light & Coke Co.; in August, 3,622,800 feet, and also 6,926,900 feet sold to the Peoria Gas Light & Coke Co.

128. Are you now prepared to state the quantity of the various kinds of residuals produced by your company during the same period?

A. Yes sir.

129. You may state those, if you please.

A. The following amounts of coke was made in the various months. In September, 1901, 770,740 pounds; in October, 1,262,304 pounds; in November, 2,605,911 pounds; in December, 3,014,933 pounds; in January, 1902, 2,647,982 pounds; in February, 2,379,122 pounds; in March, 2,060,145 pounds; in April, 1,616,011 pounds; in May, 1,593,573 pounds; in June 1,432,005 pounds; in July 1,604,023 pounds; in August, 1,883,605 pounds.

There was made of breeze in September, 1901, 41,400 pounds; in October, 29,500 pounds; in November, 85,600 pounds; in December, 69,470 pounds; in January, 1902, 180,000 pounds; in February, 209,000 pounds; in March, 144,000 pounds; in April 128,000 pounds; in May 107,000 pounds; in June 60,000 pounds; in July 82,000 pounds; in August 101,000 pounds.

There was made of tar:—In September, 1901, 6,051 gallons; in October, 10,708 gallons; in November, 19,290 gallons; in December 22,182 gallons; in January, 1902, 20,115 gallons; in February, 18,922 gallons; in March, 18,646 gallons; in April,
2135 & 2136 20,217 gallons; in May, 16,406 gallons; in June, 18,570 gallons; in July, 17,500 gallons; in August, 12,000 gallons.

There was made of ammonia in September, 1901, 1,282.2 pounds; in October 1,645.2 pounds; in November 5,987.2 pounds; in Decem-

ber, 7,541.6 pounds; in January, 1902, 7,743.1 pounds; in February, 6,023.8 pounds; in March, 6,847.1 pounds; in April, 7,328.8 pounds; in May, 6,163.1 pounds; in June, 7,241.1 pounds; in July, 6,142.1 pounds; in August, 4,749 pounds.

There was made of retort carbon, 31,700 pounds in March, 1902. This was the accumulations of previous months; none has been produced since.

130. During how many months had that carbon been accumulating if you know?

Ans. Probably 12 or 15 months.

131. It would approximately, then, be a year's accumulations?

A. Yes, approximately so.

132. Are you able to state the quantity of coke and breeze used by your company in the process of manufacture during the period in question?

Objected to as immaterial and not cross examination.

The MASTER: The witness may answer subject to the objection.

A. Yes sir.

133. You may state that, if you please.

There was used of coke in the month of September, 1901, 190,635 pounds; in October, 390,078 pounds; in November, 607,761 pounds; in December, 653,554 pounds; in January, 1902, 637,475 pounds; in February, 550,716 pounds; in March, 540,414 pounds; in April, 125,283 pounds; in May, 37,920 pounds; in June, 68,498 pounds; in July, 371,299 pounds; in August, 323,675 pounds.

All of the breeze produced was used each month.

134. At what prices were the coke and breeze used in your manufacture charged?

2137 A. They were charged out of the store room at the same price which they were charged into the store room; the coke at the uniform price of $3.25 per ton and the breeze at the uniform price of $1.00 per ton.

135. At what prices did your company sell its coke during the year covered by your testimony at this time?

Objected to as immaterial and not cross examination.

The MASTER: The witness may answer subject to the objection.

A. From $2.65 per ton up to, I think the highest was $4.75 per ton, which included the delivery charges.

136. At what places did you deliver where the gross price was $4.75, if you remember?

Objected to same grounds. Same ruling.

A. I don't remember all of them but at Sioux City, Iowa, Des Moines, Iowa, Boone, Iowa, Council Bluffs, Iowa and several places in Wisconsin and Minnesota.

137. By including delivery charges, do I understand you to mean transportation charges to destinations?

Ans. Yes sir.

138. Did you deliver any in Peoria at the maximum price of $4.75?

Ans. No sir.

139. What was the highest price you received for coke delivered in Peoria?

Objected to same grounds as before. Same ruling.

A. I think $4.50 was the maximum price for any coke delivered in Peoria which was crushed coke.

(The MASTER:)

140. Was it higher in market value than common coke?

A. Yes sir, about 50 cents a ton higher than common coke; I spoke of it as crushed coke, I should properly say screened coke. When we want to size the coke, we screen it; in some works
2138 it is crushed and sold under the name of crushed coke.

(Mr. TICHENOR:)

141. Are you able to state what proportion of your coke sales were made for Peoria delivery?

Objected to same grounds as before. Same ruling.

A. I should say a little less than one half of the coke during the period mentioned was sold in Peoria.

142. During what period of time within that year, were the prices at the maximum which you have given for Peoria delivery and also for outside delivery?

Objected to same grounds. Same ruling.

A. The highest price was in the latter part of August, 1902, and along in December, 1901, and January, 1902; we have a scale of prices for coke furnished in small lots by wagons which is usually 50 cents a ton higher in the winter time than in the summer, but the winter schedule was put into effect in the latter part of August, 1902, on account of the coal strike which caused us to pay a higher price for coal.

143. Are those small lots, to which you have referred, delivered by your company?

A. No sir. That is to say, they are delivered at our expense but not by our own people; we contract that delivery.

144. What is the cost of such delivery per ton?

Objected to same grounds. Same ruling.

A. 50 cents a ton anywhere within the limits defined by Western avenue, an irregular line along the upper part of the bluff near to and about Nebraska street, and I think either Cornhill street or Mary street in the northern part of the city; beyond those limits we pay an extra cent a bushel.

145. That would be approximately two miles from your works would it?

Ans. Approximately, yes sir.

2139 146. Was all of the coke which you sold during that period for the Peoria delivery delivered by wagons?

Objected to same grounds. Same ruling.

A. No, probably not one twentieth of it was delivered by wagon; the great bulk of it was delivered by steam road.

147. What was the transportation charge per ton for such as was delivered by rail?

Objected to same grounds. Same ruling.

A. Well, that depends somewhat on circumstances; P. & P. U. delivery within the city limits are $1.50 per car plus 25 cents in and 25 cents out, for weighing, making the charge $2.00 a car, which is about 7½ cents a ton on the average; then, if we have to deliver to the Rock Island, there is another transfer charge of $1.50 and if the coke goes beyond Western avenue or north of the Rock Island yards there is an additional charge.

148. On the average, how did the expense of delivery by rail correspond with that of wagon deliveries within that period?

A. It is cheaper to deliver by rail where you can.

149. Do you know about what the difference would be per ton?

A. I should say on the average there would be 30 cents a ton difference.

150. Are you able to state from recollection substantially how the price for coke ranged during the different months of that year?

Objected to as immaterial and not cross examination.

The Master: Admitted subject to the objection.

A. In car lots the price during September, 1901, averaged about $3.20 per ton delivered—$3.20 to $3.50. I may as well explain that what coke we sell in Peoria as a rule we sell on yearly contracts to the various industries here. I refer now to coke, which is sold in

car lots. The general price for that is $3.50 a ton delivered,

2140 out of which we pay the brokerage commission to the coal company here, who make the contracts for us, of 10 cents per ton, so it nets our company about $3.40; that has been the average price throughout about all of the last year and up to the present time on coke sold in Peoria; the Peoria consumption is not sufficient to use our production and coke accumulates during the late winter and the summer periods. The coke which was sold out of town through the period referred to averaged about $3.50 a ton in the winter time and beginning say in March fell off to $2.75 and in fact as low as $2.65, the bulk of it was sold; that is, some three thousand tons was sold at from $2.65 to $2.90 through the summer; as long as that lasted, that remained the price and it was cleaned up in August; since then we have sold coke generally speaking on con

tracts to the inductries; we took one additional industry in fact two additional industries in the past summer at the price of $3.50 per ton delivered. In wagon loads the usual price is at the rate of $4.50 per ton delivered in the winter time and $4.00 per ton delivered in the summer time, the bulk of it being crushed or screened coke.

151. Do I understand that any part of this coke which you delivered by rail has been at the higher price which you have specified of $4.50 or $4.75?

A. No sir, there has been none of the coke delivered by rail at a higher figure; I don't recollect any at a gross figure of over $3.50.

152. Is there any difference in the market prices between coke produced in a regular coke oven and gas house coke?

Objected to as immaterial and not cross-examination and not proper rebuttal.

The MASTER: Is there anything in evidence in the record that they produced more than the one kind and character of coke here?

Mr. TICHENOR: No sir, but I want to get the information.

The MASTER: Well, he may answer subject to the objection.

2141 A. Yes, a very great difference. As a general proposition, the oven coke is graded into two classes called foundry coke and furnace coke; either foundry or furnace coke must be very much harder than gas house coke and usually sells in the market at from 50 cents to $2. a ton more than gas coke.; this is subject to the one exception that certain districts, particularly West Virginia and portions of Ohio, produce a grade of soft coke which, although it burns as long as foundry or furnace coke, does not gain the necessary strength of structure to permit of its use for foundry and furnace purposes; this coke is used in malt house-, distilleries, brick yards, bakeries and other places where gas house coke is usually sold and in fact in this market determines the price which can be got for gas house coke.

153. I think you have testified heretofore that your tar is all handled on contract for a term of years, or on contract running for a considerable length of time?

A. Yes sir, our tar is under contract until next January or February with Bushell & Sons of Peoria.

154. And have you also contracts for the disposition of your ammonia product for a period?

A. Yes sir, we have a contract which runs about a year or a year and one half longer with the Michigan ammonia works for that.

155. And as a rule that is the way you dispose of those residuals?

A. Yes sir, we have not sold either tar or ammonia to anyone else than through the contractors.

156. In what way do the transactions between your company and the old company during the year in question, so far as pertains to material and labor furnished by you, enter into your annual statement marked "Exhibit 43"?

2142 A. Only, I think, to the extent that the amount of gas sold to the Peoria Gas Light & Coke Co. is included in the statement; I think there is nothing else in the statement which refers or relates to any transaction between the Peoria Gas & Electric Company and the Peoria Gas Light & Coke Co.

157. Then, I understand you to say that none of the charges made by your company against that company for labor or material in such street or other work as you did for its account, is charged in "Exhibit 43"?

A. No sir, none of the material or labor furnished to them on their account is included in the operating expenses as shown on that statement; that statement covers only the operation of the Peoria Gas & Electric Company.

158. Then, in your accounting all of those items were kept entirely separate?

Ans. Entirely separate, yes sir.

159. That labor for the old company, during the time your contract with that company was in force, was furnished by your company, was it not?

A. No portion of the labor in this statement was; we furnished certain labor and material under the terms of the contract.

160. That is what I mean?

A. Yes, we performed certain services for them under the terms of the contract.

161. Was that labor performed by regular employés of your company or were they extra men?

A. They were all additional men with the exception that a portion of the time of the street foreman and shop foreman and of Mr. Robb, the superintendent of distribution, was put in on the work of looking after matters pertaining wholly to the business of the Peoria Gas Light & Coke Co.

162. The labor itself then, as I understand, was not done
2143 by your regular men?

A. Not as a rule; there was some necessary overlaps in case of complaint or a hurry call to set a mater or something of that sort.

163. In what manner was the accounting done in those instances where the work was performed by your regular men?

Objected to as immaterial and not cross examination and not proper rebuttal. Same ruling.

A. Whatever time they put in on the matters of the Peoria Gas Light & Coke Co. was charged to the Peoria Gas Light & Coke Co. in other words, every man turned in every day a diary showing the number of hours' work he put in on a given working order; in that case all work performed for the Peoria Gas Light & Coke Company's working order were gotten out with a number showing the character of the work and if one of our men worked, we will say, five hours, one hour or half an hour, or any portion of time, on work for

the Peoria Gas Light & Coke Co. in turning in his time at night, he showed the length of time he had worked on that particular job number and in making up the pay rolls the distribution was made accordingly.

164. And was the time employed for the other company deducted from the man's regular time with your company?

Objected to same grounds. Same ruling.

A. Yes. You see a man working 10 hours a day would have his time distributed over the several classes of work he was doing, and that portion of his time which was charged to the old company would not appear in our expense statement.

165. Then if one of your regular men worked for your company 5 hours a day on a given day, and 5 hours for the old company, in your expense statement it would show as though he had worked 5 hours for your company?

A. Yes sir, his time would only be put in at 5 hours for 2144 our company.

166. In your statement marked "Exhibit 48" what does the item under labor in account No. 32 include?

A. That includes the labor in erecting the buildings at the gas works, or any additions to the building.

167. Up to September 30, 1902.

A. Yes, and that includes the labor which was furnished by the company itself; it does not include any labor furnished by contractors on contracts.

168. What is the meaning of those two items in that account for exactly the same amount?

A. In the general ledger of the company, we have only 6 property accounts; those are, "general expenses," "manufacturing," "distribution," "miscellaneous," "plant," "additions to property." As I explained in my original testimony, the first four subdivisions run only up to May 1, 1900, and there has been no entry in those accounts subsequent to that time. That leaves as the property account or as often termed, "construction accounts" on the general ledger merely, "plant and additions to property." Now, "plant" and "land and buildings" in this particular case happens to mean the same thing. In other words, there is no sub-division of the plant account and the plant account contains now only the cost of land and buildings that was left in that way with the expectation that at some time we might want to sub-divide that still further and on the general ledger account everything appears as "plant" that is now included in account No. 32—"land and buildings."

169. And "plant"?

A. Land and buildings is the only thing included in plant account.

170. What is the reason that item is so much smaller than it was in the corresponding account as of September 1, 1900?

2145 A. Because in the early part of this summer we sold a piece of property in St. John's subdivision for about $11,000. and credited the money when received to that account.

171. Outside of that particular sale and the corresponding credit, has there been any addition to that item?

A. Nothing of any great importance; there may have been some small amount; I do not now recall any.

172. Is that the only item, with the exception of these small matters to which you have just referred, entering into the labor account under No. 32 that materially affects it in those two years?

A. I do not recall now any difference between the account September 30, 1900, and September 30, 1902, and I do not recall anything, except that one item of $11,000. of any importance which would affect that account.

173. By reference to the corresponding item as of date September, 1900, it then stood $51,510.16?

A. Yes, that was September 1, 1900.

174. In what manner do you account for that difference?

A. That was undoubtedly due to the fact that at the close of the year 1900, when the general audit of the books was made, it was found that some contractors' bills were included under the head of labor which were subsequently closed over to the material heading and the difference made in that way. You will notice that the total investment was $98,322. at that time as against $87.919. now. If the $11,000. is added to the account as it appears September 30, 1902, it would make almost the exact total investment as shown by the statement of September 1, 1900, and I have an indistinct recollection—and yet what I believe to be an accurate recollection—that at the date of the general audit of the books at the close of the fiscal year, it was discovered that contractors' bills had been put
2146 into labor which should have gone into material; that would be my explanation of the difference.

175. Under which one of the headings in account No. 32 does that land appear, either in your statement of September 1, 1900, or September 30, 1902?

A. In the statment of September 30, 1902, it appears under the head of material—the land itself, and I think also appears under the same heading in the statement of September 1, 1900.

176. There is a large difference, is there not, between the item of material in account No. 32 in your statement of September 1, 1900, and that of September 30, 1902?

A. Yes, there is.

177. How do you account for that?

A. Probably it is due entirely to this fact which I stated before, that in making up the statement as of September 30, 1902, which was taken from the books and vouchers of the company, the bills of some contractors were put into labor which were subsequently transferred to material.

178. Can you tell by taking the differences as to whether or not

the change in those accounts can be accounted for in that manner?

A. Yes, I am very positive that is the correct explanation, for this reason; that the greater portion of the work in connection with the construction of the plant was done by contract and our own men, who were regularly on our pay roll, did relatively little of that work. As between what is labor and what is material, it is often difficult to discriminate and I now recall the fact that in discussing that matter with the auditor and treasurer of the company we finally concluded—and this conclusion was reached some time after the preparation of this particular statement of September 1, 1900—that we would put into the column hereafter only the labor that appeared on our own pay roll so in checking it up we
2147 could readily check the labor column against our pay roll although the work furnished, or the thing of value furnished, by a contractor might be wholly labor, we would yet put it in the material column so the labor column would balance with our pay roll, and I have no doubt whatever it was in consequence of that understanding we arrived at that the change was made.

179. There has been no change in your land except the one to which you have referred?

A. No sir, nothing except the sale of the piece of property I referred to.

Re-direct interrogatories by Mr. ABBOTT:

1. In making up the annual statement marked "Exhibit 43" is any of the material or labor furnished to the Peoria Gas Light & Coke Company under their contract, and which appears in the account offered in evidence marked "Exhibit —, and which has been paid for by that company as testified, included in the operating expenses of your company as appears in said annual statement?

A. No sir, no portion of either the material or labor.

2. Referring to the statements you made on your cross examination with reference to the amount of gas sold from month to month during the period from September 1, 1901, to August 30, 1902; do the amounts which you gave there as of gas sold to the Peoria Gas Light & Coke Co. include the amount settled for by that company at the rate of 50 cents per thousand feet as leakage or unaccounted for gas?

A. Yes sir, the amount as given includes all gas furnished to them, whether the gas was paid for at 50 cents or 75 cents per thousand feet.

3. You referred several times to a difference in the price of coke furnished here in the Peoria market. I will ask you if any con-
2148 siderable portion of that was sold at the maximum price you mentioned except such as would be delivered in an occasional wagon load?

A. No sir.

4. You also spoke of the fact that in some instances higher price had been gotten for coke during the present summer on account o the increased price of coal. In that connection you may state wha the ruling market price of Youghiogheny coal is at the preser time?

Objected to as incompetent, improper, immaterial, not proper r direct. (Admitted subject to the objection.)

A. The ruling price today is $5.30 per ton on board cars Chicag or $5.50 per ton on board cars Peoria.

5. In the statements which you made at length on your cro examination with reference to the amount of material charged ou from the store room from month to month, at what rate did yo figure the price of Youghiogheny coal, that is in connection wit this store room account and in making up your annual statemer "Exhibit 43"?

Objected to same grounds as before. Same ruling.

A. That coal was charged out at whatever the store room un for the month was. That is to say, we take at the close of eac month the total amount of coal which has been received durin the month and the prices we have paid for it and charge it out that unit price; that averaged from $2.80 for the most of it to $3. for a small portion of it.

6. I will ask you what price your company has to pay for Youg iogheny gas coal at the present time in this city for the purpo of gas manufacture?

Objected to same grounds. Same ruling.

A. We are paying now $4.25 a ton; I bought 2,000 tons in Se tember at $4.25 on track here in Peoria and that is the co
2149 we are now using.

7. In handling the vouchers, with reference to which y were asked on cross examination, you stated, I believe, that the were all the vouchers that appeared with reference to the expen tures for each given month as you testified. Do you mean to understood that those vouchers on which you were examined are of the vouchers relating to the expenditures of your company any one of those months?

A. No, I did not mean to be understood that they represented t entire expenditures of the month; they represent the cash payme made in that month so far as was practicable.

8. My question related to the possibility of loss of any vouch in their handling by the different people who have to do wi them—whether such possibility of loss exists?

A. Oh, yes, there is some possibility of loss.

9. What system, if any, do you have of checking over these st room accounts for the purpose of correcting them, that is, is t

done from month to month or is it done once a year with reference to the monthly send-out from the store room?

A. There is a checking and correction of errors at the close of the fiscal year; the daily manufacture of coke, tar, ammonia all residuals and the daily use of the coal is kept track of so far as is possible without too great cost; the wagons are hauled over a scales to determine the amount of coal but there is always a difference, and generally a shortage, between the amount of coal as appears from the weighing of the cars, and the amount as determined by the total weight of the small wagons which bring it into the house; those differences are carried along and checked out at the close of the fiscal year on December 31st; the same way with the coke and the tar and ammonia; we can only arrive at the actual
2150 production of each month approximately, not correctly.

10. Were such corrections made in connection with the annual statement you made up marked "Exhibit 43" and was that statement made up with reference to the corrected store room account?

Ans. Yes sir.

11. And do those corrections appear in the statement which you gave of the amount of material charged out from the store room from month to month in your testimony now on cross examination?

A. No, those statements don't appear there.

12. When you made up the annual statement marked "Exhibit 43," state what you did with reference to personal instruction and examination of the vouchers which were made the basis of that statement?

The MASTER: Oh, I think you have been all over that Mr. Abbott:

Mr. ABBOTT: It is for the purpose of making the record perfectly clear and comprehensible on any minor discrepancies that may appear between the annual statement and any figures which may be produced as the result of the cross examination of this witness. In this cross examination, the witness has simply hurried over the vouchers without a close examination of them, whereas in making up the annual statement, he personally inspected them and had personal knowledge of their proper distribution.

The MASTER: You want to show that "Exhibit 43" is correct and "Exhibit 47" may possibly be wrong, do you?

Mr. ABBOTT: No, "Exhibit 47" is for the month of September only, but I desire the witness shall have an opportunity to make clear any discrepancy which may occur between "Exhibit 43," which the witness knows to be correct, and figures which may be made up by counsel or experts from his testimony on the vouchers on cross examination.

The MASTER: It occurs to me the witness has explained it
2151 fully but if there is any doubt about it, the witness may answer.

A. I made a personal examination and verification of the original vouchers and all original entries and personally made up the computation from them which is contained in the statement marked "Exhibit 43."

13. I will ask you if there is any further explanation you desire to make of the connection between the vouchers, with reference to which you were interrogated on cross examination, and the annual statement you made up marked "Exhibit 43" further than you have already made.

A. I think I stated in my cross examination that the vouchers did not include taxes or insurance or items of that sort; neither do they include any journal entries other than those made up from the store room reports at the close of each month. Now, there are certain items of labor which are put upon material in the store room and there are also certain accounts which are carried in what we term an adjustment account which adjusts discrepancies and differences which arise at any time either in the manufacturing or distributing account which are not included in the vouchers.

14. Do the vouchers for any given month show all the expenditures for that month or if there are any differences state how those come about,—I mean if any in addition to what you have stated with reference to the fact that some journal entries are made as you have testified?

A. The vouchers sometimes—I may say quite often—as registered in any month may not necessarily mean the expenditures or expenses for that particular month for the reason it is the custom of the company to pay on the 20th of the month for all material received during the preceding month, provided the invoice is on hand to be checked up and audited by the 10th of the month, but
2152 it frequently happens that people from whom we buy material fail to get the invoice of it in in time to be paid, so there is quite often an over-lap and in attempting to separate the expenses of any particular month from the preceding month one must go to the vouchers to see when the material was received or to some source other than to the vouchers to see when the material was received that should have been charged.

Complainant rests in rebuttal.

Sur-rebuttal Evidence.

MATHEW HENEBERY recalled on behalf of defendant, testified as follows:

Direct interrogatories by Mr. MANSFIELD:

1. You are the same Mathew Henebery that testified before in this case, are you not?

A. Yes, I have testified once.

2. How long were you connected with the Peoria Gas Light & Coke Co.?

A. I guess it must be 20 or 25 years.

3. Are you familiar with the items of expense that enter into the cost of the manufacture of gas in a general way?

Objected to as incompetent, immaterial and not sur-rebuttal.

The MASTER: Do you limit *to* his experience in the city of Peoria, Mr. Mansfield?

Mr. MANSFIELD: Yes sir, it is simply a preliminary question.

The MASTER: I do not see any objection to his answering the preliminary question; it is simply a qualifying question anyway.

A. As a general thing, I passed on the items of expenses always, as I was on the auditing committee most of the time I was connected with the company.

4. From your connection with the Peoria Gas Light & Coke Co. and your position on the auditing committee, can you tell what was the average annual legal expense that your company was put to in conducting its business of manufacturing gas and distributing it in the city of Peoria during the time you were connected with that company?

2153

Objected to as incompetent, immaterial, not proper sur-rebuttal and because the question refers to a specific instance and not to general knowledge of the subject.

The MASTER: I don't think it competent as sur-rebuttal but the witness may answer subject to the objection.

A. Well, now, it depends altogether on what kind of expenses you have reference to.

The MASTER: What do you mean by legal expenses, Mr. Mansfield?

Mr. MANSFIELD: Such expenses as are absolutely legal in their character—paying attorneys.

The WITNESS: I think while I was connected with that company $250. per annum would cover everything in the way of legal expenses—$2.00 to $2.50.

5. What do you include in legal expenses?

Objected to as incompetent, immaterial, not sur-rebuttal, referring to a specific instance and not to general knowledge covering the subject.

A. My idea in my answer was attorneys' fees and such matters, damage suits—anything of that kind—I would include them for the time I was connected with the company; I think $250. would cover everything to the best of my knowledge.

6. Does your last answer include all damage claims that were settled by the company either in or out of court?

A. That will include them during the number of years I was in

on the average per annum. I would further state, if not ob-
2154 jected to, that I really don't remember of but one damage suit which we compromised and one of the men that compromised it is here now; that is the only damage suit I ever knowed the company had; that was one up on Jefferson street.

7. Was there a suit brought upon that claim?

A. I could not say whether there was or not but I think not.

8. It was settled out of court, was it?

A. That is my opinion of it; Stevens, Horton & Lee settled it.

9. Do you know how many horses and wagons were used by the Peoria Gas Light & Coke Co. subsequent to 1895 in the usual course of their business?

Objected to as incompetent, immaterial, not sur-rebuttal, and referring to a specific isolated instance and not as to the general rule covering such business.

The MASTER: The witness may answer subject to the objection.

A. Well, for the most of the time, we had but one horse and wagon.

10. When if at any time did you have more than one horse and wagon.

Objected to same grounds. Same ruling.

A. After we got into the electric light business, then we mixed backwards and forwards and they got more there but not in the gas company; we had but one.

11. You had one horse and wagon then that was exclusively used in conducting the gas business?

Objected to same grounds. Same ruling.

A. Yes, that is all I remember; of course, we had a good deal more hauling at times than one wagon could do. For instance, when a shipment of pipe come that was not delivered at the yards we had to have it hauled by team.

2155 12. How frequently did that occur?

Objected to same grounds. Same ruling.

A. We had to go outside very little for outside help to haul our iron.

13. Do you know about how much the average annual cost would be for teams hired outside of the one wagon of the Peoria Gas Light & Coke Co.?

Objected to same grounds. Same ruling.

A. Why, maybe $100. some years and some years nothing; perhaps there would be 5 or 10 years we would have no iron.

Cross interrogatories by Mr. ABBOTT:

1. Were you on the auditing board during all the time of your connection with that company?

A. Yes, I believe I was.

2. And during all that time the bills for legal services loss and damages came under your supervision?

Ans. Yes.

3. And you think your recollection of that matter at the present time is fairly clear?

Ans. I think so, yes sir.

4. Do you recall any instance in which your account for legal services for a year would run less than $200. or $250.?

A. Well, I don't know.

5. Were there not some years when it went considerably more than that?

Ans. It may be.

6. During the time that the proceedings in eminent domain by the Peoria Terminal Railway Company was pending against your company, were not your expenses for legal services during those years considerably in excess of that amount?

A. Yes sir, if you include them.

7. That case was tried twice in the circuit court of Peoria county, was it not?

Ans. Twice.

2156 8. And after the first trial, it went to the supreme court, did it not?

Ans. I think not.

9. Do you remember what your expenses for legal services was in connection with the first trial of that case?

A. They were very heavy.

10. They amounted to several thousand dollars, did they not?

A. Yes.

11. Do you know what the expenses were in connection with that case on its appeal to the supreme court, if it went there?

A. I am not so well posted on that; I was not aware it went to the supreme court.

12. You do remember, however, its being tried a second time in the circuit court of Peoria county, do you not?

A. I don't remember that; I think we had but one trial; I know we had a man from Chicago down to attend to that for us.

13. It was Larry Harmon, was it not?

Ans. Yes sir.

14. Was he here at the first trial?

A. He was here at one trial.

15. To refresh your recollection, I will ask you if it is not true that the case was tried here in the circuit court of Peoria county and then a year or two afterwards it was re-tried here and it was on the second trial that your local attorneys were assisted by Larry Harmon of Chicago?

A. I don't remember that he tried the first case.

16. Were not your expenses on that trial, I mean the second trial, for legal services very heavy?

A. You mean the one Larry Harmon was in?

17. Do you remember what the charge for legal services was in connection with that case?

A. Yes, I remember what Larry Harmon charged us; he charged us $100. a day.

2157 18. Do you remember about how long the trial lasted?

A. I don't know but I think he got paid for five days.

19. Was it not much more than that?

A. Maybe it was.

20. Did not his bill run into the thousands for legal services in that case?

Ans. No.

21. You also employed Peoria attorneys in the trial of that case, did you not?

Ans. Well, I don't remember.

22. I will ask you if Mr. Tichenor and Judge Evans did not also participate in the second trial of that case?

A. By the way, yes, I know Judge Evans and Mr. Tichenor were in the case at some time, but I think it was the time Mr. Harmon was in it.

23. Did they render a bill for legal services?

A. Oh, I don't know what their bill was; I took particular notice of Harmon's bill because I thought it was pretty expensive; I don't remember the other bills.

24. You don't know now whether they rendered a bill for those services or not?

Ans. I do not.

25. Is it not a fact that the Peoria attorneys on that second trial of that suit were paid over a thousand dollars?

A. I could not say as to that, but I know Judge Evans was in one suit in connection with that condemnation case; I was of the opinion that it was at the same time Larry Harmon was here.

26. Your recollection about that is not so clear as it is with reference to the small average amount you have given?

A. No sir, it is not.

27. In that same suit you also had a number of expert witnesses employed, did you not?

Ans. Yes sir.

28. Did you have any expense in connection with them?

2158 A. Yes, some of them were very heavy.

29. How much, if you recollect, was the expenses in connection with the fees of expert witnesses in that case?

A. I remember one man, I believe, who charged $100. a day—an expert engineer.

30. Who was that, Mr. Egner?

Ans. I could not say who it was.

31. You had several of them here, did you not?
A. I don't know how many there was; I think two or three but I don't know in particular what any of them charged.
32. They all charged for their services, did they not?
A. I could not say as to that.
33. Is it not a fact that none of them charged less than $100. per day and traveling expenses?
A. I could not say, I know one did charge $100.
34. During the years that suit was pending, your expenses for legal services and fees of expert witnesses and other costs in connection with that suit were very heavy, were they not—running into thousands of dollars?
A. They were about $7,000., I think, in connection with that case; that was about the only suit we ever had, I think.
35. I believe you stated on direct examination that you considered your estimate of $250. a year would include legal expenses and the settlement of loss and damage claims?
A. Yes, I did, but I did not have reference to that condemnation suit in that answer.
36. Did you also pass on the vouchers which were used in the settlement of loss and damage claims?
Ans. Yes sir.
37. And you recollect at this time of but one in all that period?
Ans. I do not recall but one.
38. Do you remember the case of Elizabeth Harrington down near Steubenville street who claimed to have been injured
2159 by suffocation by gas in her house one winter when the ground froze up—I think it was the winter of 1895-'96?
A. I don't recollect it at all.
39. You don't know how much was paid her in the settlement of that case?
Ans. No sir.
40. Do you recollect not quite so long ago, I think in the summer of 1898-'99 of an explosion in a basement on North Washington street claimed to have occurred because of a defective meter?
A. Yes, I remember that.
41. There was at least one person killed and two or three injured in that explosion, was there not?
A. No, nobody was killed.
42. Was not a woman so fatally burned that she died a day or two afterwards?
A. Oh, yes, I remember that.
43. You don't know what was paid in the settlement of the claims arising out of that explosion, do you?
A. I don't think there was a cent; I don't know of one cent being paid in that case (because it evidently did not come from the gas).

Complainant objects to that part of the foregoing answer enclosed in brackets as not responsive and moves the court to exclude it.

44. Do you remember an explosion down on South Washington street near Thomas & Company's wholesale fruit house where Tom Ballantine received injuries?

Ans. Yes sir.

45. Was that case settled?

Ans. Yes sir.

46. There was money paid in that settlement, was there not?

A. There was some money paid to Ballantine.

47. Do you remember how much?

A. I don't know, the Coffeys done that themselves.

2160 48. Is it not a fact that Ballantine was paid upwards of $500. as a compromise of his claim for injuries received in that explosion and that the gas company also paid the expenses of repairing the building, amounting in all to upwards of $2,000.?

A. I want to deny that; while I may be wrong, I don't think there was ever such money paid out.

49. Are you sure about that?

A. I know they compromised with Ballantine. You ought to know what he was paid because it came through your office, and about anything being paid to the building, I know nothing about that.

50. What was this case up on North Jefferson street you mentioned on direct examination?

A. I don't know; you know more about that than I do.

51. But I am not on the witness stand.

A. My understanding of that case was it was compromised for $1,500.

52. That is a fact. All of these loss and damage claims which have been mentioned occurred within the last 6 or 7 years, have they not?

A. Yes, within the last seven years anyway.

53. Don't you remember also an explosion up on Knoxville avenue in which an entire family named Allmon claimed to have been asphyxiated by gas?

A. I remember something about it.

54. Do you know anything about what the situation of their claims at present is?

Ans. I know nothing about it.

55. Do you know whether or not suits are now pending in the circuit court of Peoria county brought by all the members of that family claiming to have been injured at that time?

2161 A. I don't know; I think that occurred since the old company sold out.

56. You mean it has occurred since April, 1900, since you sold out your interest?

A. Since the Coffeys sold out.

57. Did not that accident occur the previous December?

A. I think not but I may be mistaken.

58. You say during the time you were active in the management

of the Peoria Gas Light & Coke Co. it had only one horse and wagon for doing its business?

Ans. That was all.

59. Is it not a fact that the officers were receiving salaries which enabled them to furnish to a large extent their own horses and buggies or did not they furnish them for use in running about the city and attending to such matters as the officials attended to?

Objected to as not cross examination and calling for a conclusion.

The MASTER: He is asked for the fact and may answer subject to the objection.

A. There was but one horse and wagon; the Coffeys and Robison and myself were officers and I had my own horse and buggy at my own expense.

60. And Robison had his?

A. I suppose so, and the Coffeys had theirs.

61. All complaints about meters and defective service were attended to promptly with this one horse and wagon, were they?

A. That is my idea.

62. You had no complaints come to the office with regard to delay in attending to those matters at any time?

A. It may be but they were all settled up as soon as possible.

Re-direct interrogatories by Mr. MANSFIELD:

2162 1. You have testified with regard to a condemnation suit of some property that was owned by the Peoria Gas Light & Coke Co.—where was that property located?

A. Down at the gas works.

2. Was it a part of the ground upon which the manufacturing plant was situated?

Ans. Yes sir.

3. Did the condemnation of that piece of property have anything to do with the manufacture of gas?

Objected to as incompetent, immaterial, calling for a conclusion and not proper re-direct.

A. No, that had nothing to do with the manufacture of gas.

4. Was it a suit or proceeding that might have occurred to any manufacturing industry that had property located in the same locality?

Ans. Yes sir.

5. And it was a suit brought by the Peoria Terminal Railway Co. against the Peoria Gas Light & Coke Co.?

A. I think that was it.

6. For a railroad right of way through those premises?

A. Yes sir.

Re-cross interrogatories by Mr. ABBOTT:

1. You were a witness, were you not, on both trials of that condemnation case?

Ans. Yes sir.

2. And you were in court practically during the greater part of each trial, were you not?

A. Well, I forget all about one trial, if there was two—yes I was, I was interested.

3. Is it not a fact that the claim was made by your company at that time and attempted to be established on the trial of that case that the taking of this ground by that railroad company would cripple and damage severely your manufacturing facilities there?

2163 Objected to as immaterial.

The MASTER: The witness may answer subject to the objection.

A. Well, it only would have an affect on one article or item there, and that would be a holder, and that is away from the manufacture of gas altogether.

4. Do you remember the testimony of Mr. Coffey in that case?

Objected to as immaterial and incompetent. Same ruling.

A. No sir, I do not.

5. Was it not claimed and did not Mr. Coffey testify that the taking of that strip of ground would, to such an extent, diminish your storage capacity that the cost of the manufacture of gas would be considerably increased owing to the fact you would not then be able to get your coal by water during the navigable season and store as much as you formerly had done?

Objected to same grounds. Same ruling.

A. He may have given such an answer as that.

6. Was not it so considered by your company at the time?

A. Well, they talked a good deal about that getting coal from the South.

(Mr. MANSFIELD:)

7. Did you ever bring any coal in by water?

A. Not to my knowledge, no.

(Mr. ABBOTT:)

8. You did bring coal by water down the Ohio river, did you not. I don't refer to bringing coal to Peoria by water but did you not make use of the facilities for bringing coal down the Ohio river during the season?

Objected to as incompetent and immaterial. Same ruling.

A. That had nothing to do with that; we made our contracts

with men who came here selling coal and, of course, they got it here the best way they could, but that was the way they generally shipped I understood; they shipped it that way down the Ohio river to Cincinnati and then by rail to Peoria.

2161 9. Is it not a fact that it has always been claimed by the gas company here that it ought to have a large storage capacity for the purpose of taking advantage of cheap rates on the Ohio river?

Objected to on same grounds and also as not cross examination.

A. I don't know; I had nothing to do with the buying of coal.

LESLIE ROBISON, recalled on behalf of defendant, deposes and says:

Direct interrogatories by Mr. TICHENOR:

1. You are the same Leslie Robison who testified once before in this case, are you not?

Ans. Yes sir.

2. State whether or not you know the average annual expenditure of the Peoria Gas Light & Coke Co. during the period you were connected with it for legal services?

Objected to as incompetent, immaterial, not proper sur-rebuttal and also because it refers to a specific isolated plant and not as to the general expenses of such business.

The MASTER: Answer subject to the objection.

A. Well, I know generally, I could not give it exactly; I think $250. per year would have paid our attorneys' fees while I was connected with the company—strictly attorneys' fees, not costs or damages—the first 15 years I don't believe we paid $100. a year; in the last 7 or 8 years it was considerable.

3. Do you remember the condemnation case of the Peoria Terminal Railway Co. against your company?

A. Yes, very well.

4. Outside of the expenses of that suit, what did you pay for legal services during the 10 or 11 years ending with 1896 or 1897?

Objected to same grounds as before and also as entirely too remote to have any bearing on this case. Same ruling.

2165 A. I had better describe it a little. This suit you speak of on upper Jefferson street was after I was out of the company and this Allmon suit was after my time; the condemnation suit and this one down here with Thomas & Co. and the Hudson suit were the only three suits that amounted to anything while I was there and I think it was 24 or 25 years, and the attorneys' fees, figuring those three suits the one at Thomas & Co.'s, the Hudson suit and

condemnation suit, I believe $250. a year would pay the attorneys' fees for the 24 years including those three suits.

5. Leaving out of the account the expense of that condemnation proceeding, how much to the best of your recollection did you pay for legal services during the 10 or 11 years ending about the year 1896 or 1897?

A. Outside of the condemnation proceedings and outside of those other suits?

6. Those other cases were after 1896 and 1897 except the condemnation case.

A. Outside of those three suits, I don't believe we paid $500. attorneys' fees.

7. Is it not a fact that during that period you did not pay $100. attorneys' fees?

A. I don't know that we paid anything; some of our directors were pretty well informed and kept us out of law suits.

8. During the time you were connected with the company, was any suit whatever brought against you for personal injury or any claim of that kind?

Objected to as incompetent, immaterial, calling for an isolated instance and too remote to have any bearing on the issue in this case.

The MASTER: Answer subject to the objection.

2166 A. I don't remember whether there were suits brought on this Hudson case and on that Harrington case down on Cedar street which you have spoken of or not but it is my understanding we advised with our attorneys on the subject and settled the claims. As I remember it, there was very little attorneys' fees mixed in with it.

9. When did you sever your connection with the Peoria Gas Light & Coke Co.?

A. It seems to me it was in May, 1898.

10. How long were those claims prior to the termination of your connection with the company?

A. Well, the Hudson suit, the Thomas suit and the Harrington case were all shortly before that—not very long; all within say three, four or five years.

11. Are you able to state how much your company paid for damages upon claims made of that character during the time you were connected with it?

A. Well, it would be only general.

12. To the best of your recollection what was it, and you may name the different cases, if you recall them?

A. I don't remember that although I helped audit those bills and voted on them; it is so long ago it has completely gone from me; I could not tell the amount we paid Mrs. Harrington or how much we paid down here; I don't think we paid Mrs. Harrington very much; the Thomas suit down here, I think, cost us probably $1500.,

the whole thing, if I remember rightly, and the Hudson claim I have no recollection of what that cost us, if anything.

13. What is the best of your recollection with regard to the expense of settlement of the Harrington suit if at this time you have any definite recollection?

A. I only remember now it was not very large; I could not for the life of me tell how much it was; you don't want guessing at it and I cannot remember.

2167 14. During the time you were connected with the company, how many horses and wagons did it have and use in its business?

A. We always kept one horse and a one horse wagon for going around making repairs, etc.; we only kept one that I remember of, but we hired some hauling done, as Mr. Henebery said; we hired the pipe delivered.

15. To what extent did you hire pipe delivered and what were the expenditures for items of that character?

A. Well some years nothing, I think other years more; when we were laying down considerable pipe we had to haul that pipe around take the car load of pipe and deliver it around on the streets; I should say $100. a year on the average to deliver the pipe; some years it was nothing at all and some years $300. or $400.; I remember one year we delivered 40 car loads and I should say it cost us $300. that year to deliver it.

16. When you were delivering this large quantity of pipe to which you have referred, were you engaged in construction work or was that in repair work?

A. Sometimes it was in replacing old pipe with larger pipe and sometimes it was new pipe in new places—extensions; it was charged to construction mostly that kind of pipe.

17. And the hauling also would go into construction account?

A. Certainly. Well, there would be a little hauling in repairs if you call it repairs.

18. I am speaking of the large items to which you have just referred?

A. We never had any hauling done for a small amount of repair pipe.

Cross interrogatories by Mr. ABBOTT:

1. How did you take your meters from the shops to the various houses?

Ans. In the one horse wagon.

2168 2. You had your own horse and buggy during that time, did you not?

Ans. Certainly.

3. And that you used yourself for whatever attention you gave to the gas company's work?

Ans. Yes sir.

5. And Mr. Henebery did the same?
Ans. Yes sir.
6. Did Coffey have a horse and buggy?
A. Yes sir, and I think he owned his own horse and buggy; don't think the company paid anything for it.
7. The company had the benefit of it without expense except far as it would be included in the salary?
A. I don't think we were ever paid for any horse feed.
8. Do you remember about how long that condemnation suit w pending?
A. No, I don't remember just how long.
9. Were you a witness on both trials?
Ans. Probably.
10. You remember there were two trials of the case, dod you no
Ans. I am at a loss to remember whether there was one or two.
11. Did you ever figure up about what your total legal expens were in connection with that case including attorneys' fees, fees expert witness and other expenses?
A. Yes sir, the cost of that suit was over $7,000., attorneys' fe witness' fees, court costs, etc.—mostly witness fees.
12. After that suit was brought you regarded it as necessary defend it, did you not to protect your droperty rights?
A. Since you have asked me the question, I will say I did n think that suit ever ought to have been brought; I think it ough to have been settled; I had one of the same kind and settled it an it did not cost me a dollar.

Complainant objects to the answer as not responsive and mov the court to exclude it.

13. (Interrogatory No. 12 repeated to witness.)
2169 A. Certainly.
14. And as you had to defend it, these outlays went in a a necessary part of the company's outlay for those years assumin it was necessary to defend the suit—is that true?
A. I suppose it is; the expenses were necessary.
15. You say during the first 16 or 17 years of your connectio with that company you had practically no expense for attorneys a you recollect it now?
Ans. Yes sir.
16. Then in the next few years, your legal expenses increased t some extent?
Ans. Yes sir.
17. It is a fact, is it not, that they increased because the risk o explosions became greater as the plant and distributing system be came older?

Objected to as incompetent, improper, not cross examination, and calling for a conclusion.

The MASTER: The witness is asked whether or not that is a fac and he can tell what he knows as to that being a fact or not.

A. I always thought the damages were in proportion greater as the business of the company was greater.

18. And as the plant grows older?

A. I do not think it grows any older; we always renewed our pipe, renewed our works and kept them up in good order.

19. And it is necessary to do that in order to prevent such things happening?

A. To manufacture gas economically and properly, it is necessary to keep the plant in good shape.

20. You stated also that your expenses for attorneys' fees proper during those first 15 or 16 years were very small—they increased, did they not during the last 5 or 6 years of your connection with the company?

A. They did on account of these things mentioned here.

2170 21. Were not the charges for legal services during the last four or five years of your connection with the company considerably in excess of $250. a year?

Ans. Certainly.

22. Did not it run over $500. a year for the last 5 or 6 years of your connection with the company?

A. I think it did counting the condemnation suit, the Harrington suit and the Thomas suit.

23. Outside of the condemnation suit, in the regular work and conduct of your business, including settlements of these various damage suits, did not your legal expenses average for attorneys' fees during the last 5 years of your connection with the company over $500. a year?

A. I don't think they did, not strictly for attorneys' fees.

24. Do you remember about that explosion down on South Washington street near Thomas & Co.'s?

Ans. Yes sir.

25. What did you state you paid there?

A. I think our damage there all together was about $1500.

26. Was it not more than that; was not Ballantine paid over $500. and then did not the company also attend to the matter of repairs down there which cost upwards of $2,000?

A. I don't think it was so much as that.

27. They did do that, whatever the expense was?

A. Yes sir, we repaired it but I never thought it cost that much; I put it at $1,000. at the outside.

28. I understand you to say that these Allmon suits came up after your connection with the company?

A. I believe so.

29. You don't recollect at this time what was paid in settlement of the claim that grew out of the explosion on North Washington street at the Hudson store?

2171 A. I remember the fact of the explosion very well but I don't remember what it cost us.

30. And this suit on North Jefferson street was settled after you went out?

COPY BOUND CLOSE IN CENTER

A. Yes sir, I didn't have anything to do with that.

31. So you don't know what was paid for that?

Ans. No.

32. Don't you know and is it not a fact that suit was brought on the Harrington claim and the suit was substantially ready for trial and a jury either wholly or partially empaneled when the suit was settled as a result of a conversation between Mr. Edwards and his client on the one hand and yourself, Mr. Coffey, Mr. Horton and myself on the other hand?

Ans. I don't remember.

33. But you know the claim was settled and something was paid but you don't know how much?

Ans. Yes sir.

34. I think you testified on your former examination in this case that you were a practicing attorney at that time?

Ans. Yes sir.

35. Is it not a fact that during the early years of your association with the Peoria Gas Light & Coke Co. that in discussing these various matters which came up from a legal standpoint you were able to and did advise the directors on a great many matters?

Objected to as incompetent, improper, immaterial, and not cross examination. Same ruling.

A. I don't remember to have advised them in any case we ever had in court.

36. I do not refer so much to cases in court as I do to those matters that would naturally come up in a directors' meeting involving your legal relations and on which the ordinary corporation would be compelled to consult an attorney—you did advise them on such matters as that?

A. To some extent but not a great deal.

37. I will ask you whether it is not a fact that by your skill and knowledge in legal matters you were able to and did keep
2172 the company out of litigation to a large extent during those years?

A. To a small extent; I don't remember that we had questions that involved law to any considerable extent.

Re-direct interrogatories by Mr. TICHENOR:

1. Is it not true that the Almon cases referred to were brought against the city of Peoria alone and the gas company was not made a party at all and that such cases as have been tried were against the city alone?

A. I was not a director at that time and don't know; I don't think I was.

2. Did you ever receive any compensation whatever from the company during the period you were connected with it for any advice you may have given in a directors' meeting?

A. Not for attorneys' fees.

Re-cross interrogatories by Mr. ABBOTT:

1. You considered your salary adequate, did you, for the services you rendered in that way?
A. I did not take it into consideration.
2. You are not a practical gas man?
A. No sir, not with reference to the manufacturing of gas.

This was all the evidence in the case.

2173 Whereupon said statements marked Exhibits "47 & 48" were read to the master in the words and figures following, to-wit;—

Operating Statement, Month of September, 1902.

Gas sold as per consumers' meters	4,089,400 c. f.	
Total expenditures as per statement below		$7250.76
Less value of residuals made:		
747,965 lbs. coke at 3.25 per ton	1215.44	
69,000 " breeze " 1.00 " "	34.50	
- - - " retort carbon " " "	- -	
6,111 gal. tar " .05 " gal	505.55	
2242.9 lbs. ammonia " .08 " lbs	179.42	
		1734.92
Net actual cost without depreciation or interest		$5515.84
Net cost per thousand cu. ft. of gas sold after deducting value of all residuals made		1.348
Cost per thousand cu. ft. of gas sold to consumers of Peoria Gas & Electric Co. after deducting value of all residuals made and including depreciation at 6½% on cost of property excluding cost of real estate and including interest at 10% on cost of property		2.794

Acct.		Labor.	Material.	Total.
	Expenses:			
1	Salaries of officers	208.33		208.
2	Accounting department	464.75		464.
3	General office sundries		25.29	25.
4	Canvassing	68.75		68.
5	Insurance		24.25	24.
6	Rentals		49.50	49.
7	Interest			
8	Taxes		637.07	637.
9	Legal exp., loss & damage		1847.55	1847.
10	Stationery, ptg. & postage		38.60	38.
11	Stable expenses	8.01	236.56	244.
	Manufacturing:			
13	Generator fuel			
14	Gas coal		1577.17	1577.
15	Boiler fuel		89.24	89.
16	Bench fuel		271.85	271.
17	Manufacturing labor	856.58		856.
18	Manufacturing supplies		9.35	9.
19	Oil			
20	Enrichers		15.30	15.
21	Purification labor	31.80		31.
22	Purification supplies			
	Distribution:			
23	Distribution labor	282.85		282.
24	Distribution supplies	27.88	52.05	79.
	Miscellaneous:			
26	Mscl. supplies & expenses	13.98		13.
	Repairs & renewals:			
27	Repairs & renewals meters	34.90	15.01	49.
28	Repairs & renewals serv's.	6.21	25.69	31.
29	Bench repairs	44.37	27.33	71.
30	Gas house & mach'y repairs	132.81	127.73	260.
31	Repairs & renewals mains			
		2181.22	5069.54	7250.

Exhibit "47." I. C. Pinkney, master.

2174 *Cost of Gas Plant and Property of Peoria Gas & Electric Company as at September 30, 1902.*

Acct.		Labor.	Material.	Totals.	
1	Salaries of officers	7740.90	.....	7740.90	
2	Accounting department	6549.46	.....	6549.46	
3	General office sundries	.....	1903.33	1903.33	
4	Canvassing	.....	581.35	581.35	
5	Insurance	.....	.....	.....	
6	Rentals	.....	1230.00	1230.00	
7	Interest	.....	16546.58	16546.58	
8	Taxes	.....	1228.92	1228.92	
9	Legal exp., loss & dam's	2213.92	.....	2213.92	
10	Stationery, ptg. pstg	.....	1723.83	1723.83	
11	Stable expenses	.....	2252.52	2200.52	
	General expenses	16504.28	25414.53	.....	41918.81
13	Generator fuel	.....	.....	.....	
14	Gas coal	997.65	684.34	1681.99	
15	Boiler fuel	85.40	218.23	303.63	
16	Bench fuel	70.50	742.23	812.73	
17	Mfg. labor	1129.32	.....	1129.32	
18	Mfg. supplies	.....	.....	.....	
19	Oil	.....	.....	.....	
20	Enrichers	18.75	294.92	313.67	
21	Purification labor	385.45	.....	385.45	
22	Purification supplies	206.67	834.94	1141.61	
	Manufacturing	2893.74	2874.66	.....	5768.40
23	Distribution labor	366.25	2.20	368.45	
24	Distribution supplies	20.58	289.42	310.00	
	Distribution	386.83	291.62	.....	678.45
26	Mscl. supplies & exps	.....	112.17	112.17	
	Miscellaneous	.....	112.17	.....	112.17
32	Land & buildings	10830.72	77088.62	87919.34	
	Plant	10830.72	77088.62	.....	87919.34
33	Extension of mains	43759.85	83954.08	127713.93	
34	Manufacturing plant	15737.06	90728.40	106465.46	
35	New meters	3219.46	15055.48	18272.94	
36	New services	18812.94	23179.09	41992.03	
37	Tools	.....	5716.45	5716.45	
38	Furniture & fixtures	.....	3167.57	3167.57	
	Additions to property	81529.31	221799.07	.....	303328.38
	Total	.....	.....	.....	439725.55

Exhibit 48. I. C. Pinkney, master.

2175 Circuit Court United States, Northern District of Illinc
Southern Division.

PEORIA GAS & ELECTRIC Co., Complainant,
vs.
CITY OF PEORIA, Defendant.

I, the undersigned special master in said above entitled cause, hereby certify that, on the 5th day of November, 1901, at the ho of 10 o'clock a. m. on that day at the city of Chicago, Illino appeared before me as such special master, Mr. W. T. Irwin a Mr. E. C. Ritsher, solicitors for the above named complainant, a Mr. Henry Mansfield, city attorney of the City of Peoria, Illino as solicitor for the above named defendant; and it was then a there agreed by the respective solicitors for the parties to this cau that Mr. Charles P. Watson, stenographer, was in all repsects sat factory to report the testimony and proofs taken before me, and was then and there designated by me as such stenographer, and t usual oath of stenographer was by counsel waived, and the meth of procedure upon the hearing was then and there by me regulat as follows: The complainant will introduce such testimony a proofs as it may deem advisable.

That thereupon, on said day and place, and on subsequent da and places as in the record of said testimony appears, all the w nesses, whose testimony appears in the record hereof, were produce and personally came before me as witnesses, for and in behalf the complainant and defendant respectively, and whose testimon was and is urged to be material and necessary in said cause by t respective parties thereto. And said witnesses being first

2176 me duly sworn on their respective corporal oaths to testif the truth, the whole truth, and nothing but the truth upo the matters in controversy in said cause; and each being orall examined before me, at the dates and times as by their respectiv depos*i*tions is shown, then testified as the same appears and is full set forth in the record thereof, which is herewith returned as a pa of this my report, numbered,—vols. one (1) to seven (7) inclusiv and marked, "Schedules of proofs, "B".

I further certify that the exhibits by me duly certified as such were, as appears in the record of said hearing and taking of sai depositions, duly offered in evidence before me, and were by m then and there received as such, and are by me returned with sai depositions, said exhibits being by me marked from one (1) to forty eight (48) both inclusive, and with the exception of exhibit marke "one (1)", being plat of complainant's piant, are attached to th schedules of proofs marked "B".

I further certify that said depositions were taken under an orde of reference from this court, dated May 20th, 1901, and by agree-

ment of the parties to this cause, at the times and places as in and by said schedule of proofs marked Exhibit "B" fully appears.

Dated this 3rd day of June, A. D. 1903.

ISREAL C. PINKNEY,
Special Master in Chancery Aforesaid.

Endorsed on cover: File No. 19,367. N. Illinois C. C. U. S. Term No. 269. Peoria Gas and Electric Company, appellant, *vs.* City of Peoria. Filed May 23rd, 1904. File No. 19,367.

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 24 1905
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States

OCTOBER TERM, A. D. 1905.

No. 33.

PEORIA GAS AND ELECTRIC COMPANY, Appellant,

vs.

THE CITY OF PEORIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF ON BEHALF OF APPELLANT

E. C. RITSHER,
W. T. IRWIN,
W. T. ABBOTT,
Of Counsel for Appellants.

(19367)

(19367)

Supreme Court of the United States.

OCTOBER TERM, A. D. 1905.

No. 33.

PEORIA GAS AND ELECTRIC COMPANY,
Appellant,

vs.

THE CITY OF PEORIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF ON BEHALF OF APPELLANT.

This is an appeal from a decree entered by the Circuit Court for the Northern District of Illinois, Southern Division.

The bill of complaint in this case based the jurisdiction of the court upon a constitutional question, and the decree of the court below having denied to the complainant the relief sought, the appeal is brought directly to this court as involving a federal question.

Complainant, the Peoria Gas and Electric Company, in 1899 obtained from the City of Peoria, a municipal

corporation under the general laws of Illinois, a franchise ordinance permitting it to establish and operate a gas plant. This ordinance was granted under powers delegated by the state to municipalities. (Clause 13, Art. V, Chapter 24, Revised Statutes of Illinois.) The ordinance was accepted in writing by the Peoria Gas and Electric Company; a bond was filed under its provisions, and it became a binding contract between the corporation and the municipality.

In the year 1900 the Common Council of the City of Peoria, acting under the same delegation of authority by the state, passed an ordinance fixing the maximum price of gas at 75 cents per 1,000 cubit feet, which ordinance contained penal clauses and other provisions deemed to be unlawful and unreasonable.

Complainant thereupon filed its bill in chancery, praying for an injunction against the City of Peoria to restrain the enforcement of the last mentioned ordinance.

The bill alleged that the controversy presented a federal question—

1st. Because the attempt of the city council to fix the maximum price at which complainant should sell its product was an attempt on the part of the municipality by state authority to violate the contract created by the franchise ordinance of 1899.

2d. Because the maximum price fixed by the ordinance in question was so unreasonably low that the enforcement of the ordinance would result in the confiscation of the property of the complainant company

without due process of law and a violation of the Fourteenth Amendment.

The answer of the municipality asserted that the ordinance fixing the price was passed under delegated authority and was the act of the state; that the price fixed was reasonable, and that whether reasonable or not, the complainant was estopped from denying the reasonableness of the price so fixed.

A preliminary injunction was granted, issue was joined and the case was referred by agreement of the parties to a special master, to take proof and report his conclusions.

After 2,000 pages of evidence were taken, the case was fully argued before the master and the master filed his report, finding—

1st. That the ordinance fixing the price was passed under legislative authority.

2d. That the price fixed was so unreasonably low, that its enforcement would result in the confiscation of complainant's property.

3rd. That there was no merit in defendant's contention based on estoppel, and

4th, that the complainant was entitled to the relief prayed in the bill.

Exceptions were filed to the master's report and argued before the Hon. J. Otis Humphrey, District Judge, then sitting as Circuit Judge for the Northern District of Illinois, Southern Division.

The case was taken under advisement and in due sea-

son the court rendered an opinion to the effect that it appeared to him from the evidence that the complainant had violated the anti-trust laws of the State of Illinois, and that therefore it had no standing in a court of equity for the protection of its property or other rights and the court directed that the bill should be dismissed *without a determination by the court of any of the issues raised by the pleadings.*

A decree was entered in the form directed by the court and an appeal taken therefrom to this court.

The Bill of Complaint as Amended.

The *bill of complaint* (Rec. 4-20) alleges that the charter of the complainant company authorized it to construct and operate gas works; that the city of Peoria in 1899 granted to it an ordinance franchise permitting it to construct and operate a gas plant and lay mains along certain streets, etc. The franchise ordinance, set forth in full in the bill of complaint, provided, among other things, that the complainant should file a bond in the sum of $1,000, as indemnity against negligence during construction; that the work under the ordinance should begin within six months and be completed within eighteen months from the date of acceptance of the ordinance; that $5,000 in cash should be deposited with the treasurer of the city, to insure prompt work under the ordinance; and that the ordinance should take effect from and after its passage and the *acceptance* thereof by the company and the *filing* and *approval* of the bond therein required.

The bill sets forth *verbatim* the *agreement of acceptance* executed by the company through its proper officers and under its corporate seal. It alleges the filing of the bond, the deposit of the $5,000 in cash and the compliance on the part of the Gas Company with all the conditions of the ordinance; and alleges that by reason of such acceptance and compliance the same became a *binding contract between the city and the Gas Company.*

The bill of complaint sets forth (Rec., 17) the ordinance passed by the city council in 1900 fixing the maximum price of gas at 75 cents per 1,000 cubic feet and containing other provisions, among which may be noted a requirement that such gas so furnished shall afford "a light of not less than 18 candle power, to be measured and ascertained *at the place of consumption* in said city;" also a provision that any corporation charging more than 75 cents per 1,000 cubic feet, or which shall furnish gas of less than 18 candle power, shall be subject to a penalty of not less than $25 nor more than $200 for each and every offense; also a provision that any corporation refusing to furnish such gas at the price named shall be subject to a penalty of not less than $25 nor more than $200 for each and every refusal, and containing a further provision that "*all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.*"

The bill of complaint denies the right of defendant to pass an unreasonable ordinance—which denial is explained and modified by the subsequent amendment of the bill.

The bill further alleges (Rec., 18, 19) that for the

reasons stated the price ordinance is an attempt to impair the rights of contract between complainant and the city; that it is an attempt to take private property for public use without just compensation; that its enforcement will deprive complainant of its property without due process of law and will deny to complainant the equal protection of the law in violation of the Constitution of the United States.

In support of the federal questions raised, the bill further alleges that the penalties provided in the price ordinance are unreasonable and unauthorized; that it is impossible, for reasons stated specifically, to furnish gas of a uniform 18 candle power at the point of consumption; that the ordinance was passed without investigation as to the cost of gas, and, finally, that the rate fixed in the price ordinance is so unreasonably low that its enforcement will bring ruin and destruction to the property and business of complainant, representing an investment of $450,000; that complainant can not manufacture and deliver gas to consumers of the quality manufactured by it, or of the quality required by the ordinance, at the price fixed by the ordinance, and that such price is so unreasonably low that complainant, if compelled to comply with said ordinance, will be unable to meet its fixed charges and expenses, its property will be confiscated and it will be rendered insolvent.

The bill contains apt allegations showing that by reason of the penal provisions of the price ordinance its enforcement would result in a multiplicity of suits and

that the case presented is a proper one for equitable relief.

The bill of complaint concludes with a prayer for a preliminary injunction against the enforcement of the price ordinance, and prays that upon final hearing the said ordinance may be adjudged invalid, null and void, and that the municipality and its officers may be permanently enjoined from enforcing the same against complainant; and for general relief.

The *amendment* to the bill of complaint (Rec, 32, 33) eliminated the paragraph of said bill in which it had denied the right of the city to pass the ordinance and inserted in lieu of such paragraph an allegation that the city council had passed the said price ordinance under the authority granted to the city by the legislature contained in Clause 13, Sec. 1, Art. V, Chap. 24, of the Revised Statutes of Illinois, relating to the powers of cities and villages, being the provision of the statute under which the original franchise ordinance was granted. The amendment then alleges that the city also claims the power to pass the price ordinance under the police powers delegated to municipalities by the legislature. (Clause 66, sec. 2, Art. V., chap. 24, Revised Statutes.) The amendment then alleges that the act of the legislature under whic. the original franchise ordinance was passed and under which the price ordinance was adopted does not authorize a municipality to pass *such* an ordinance as the price ordinance in question, for the reason that said ordinance would have the effect to impair the rights of complainant under said original fran-

chise ordinance, *the same being a contract* entered into and existing under state authority. The amendment further alleges that the said price ordinance in its operation would deprive complainant of its property without due process of law, and in effect would deny to complainant the equal protection of the laws, in violation of the provisions of the Constitution of the United States.

The Answer.

The answer of the municipality (Rec., 21–29) admits the allegations of the bill with respect to the granting of the franchise ordinance, its acceptance by the complainant, the expenditure of large sums of money under the terms thereof, and "*that it substantially complied with the terms and provisions of said ordinance on its part to be kept and performed as alleged in said bill.*"

The answer then avers that prior to the time that the complainant obtained its franchise ordinance another gas company was manufacturing and selling gas to the City of Peoria and its inhabitants, which gas company, for convenience, may be designated "the old company."

The answer avers that prior to the passage of the franchise ordinance the promoters of the new company made sundry representations to the citizens of Peoria and to the members of the city council to the effect that if a franchise ordinance was granted to the complainant, it would enter into *bona fide* competition with the old company and the price of gas would be materially reduced.

The answer further avers that after the franchise or-

dinance was granted, bitter competition ensued, and at one time the price reached the low point of 30 cents per 1,000 cubic feet.

The answer then avers that shortly before the passage of the price ordinance both corporations agreed that they would no longer compete for the sale and delivery of gas, and thereupon fixed the price at $1.15 net for light and 75 cents net for fuel, and the answer charges that such agreement was "in direct *violation* of the *representations* and agreements of said Peoria Gas and Electric Company with the citizens of said City of Peoria and the common council of said city when said ordinance was obtained, and by virtue of which, said ordinance and the franchises thereunder were granted to the Peoria Gas and Electric Company, and that said Peoria Gas and Electric Company, by reason of its deceptive promises and false and fraudulent representations, was enabled to obtain the right of way and lay down its pipes in the streets," etc. (Rec., 27).

The answer avers that said price ordinance was passed in good faith by the common council under its delegated powers (Rec., 28), and in the belief that it had the power to pass ordinances for the promotion of the welfare of the inhabitants of said city, and to prevent acts of oppression, injustice and extortion from being practiced against said inhabitants.

The answer denies that the rate fixed by the price ordinance is unreasonable, and avers in effect that, even though unreasonable, complainant *is estopped* from pleading such fact.

The answer further avers that no sufficient reason exists for the interposition of a court of equity, and prays that the bill be dismissed.

Replication and Order of Reference.

A replication was duly filed to the answer and thereafter the following order was entered in said cause (Rec., 38):

> "Now come the parties, by their solicitors, and by agreement in open court it is hereby ordered that Mr. I. C. Pinckney, of the City of Peoria, in said district and division, be and he is hereby appointed a special commissioner, to take the proofs herein and report the same, with his findings and conclusions herein, with all convenient speed."

Pursuant to the order of reference, more than two thousand pages of testimony were taken in the case during a period of more than a year, and the case was argued before the special commissioner appointed by agreement of the parties.

Special Commissioner's Report.

The special commissioner filed his report, containing twenty-six findings of fact and twenty-five conclusions of law.

The findings of the special commissioner fully sustained the contentions of complainant on all points necessary to the relief sought. These findings are substantially set forth on p. 58 *et seq.*

The Action of the Court.

Notwithstanding the elaborate findings of the master and the efforts of both parties to obtain a decision on the merits, the court, of its own motion, found that the complainant had violated the anti-trust statutes of the State of Illinois and therefore declined to pass on the issues raised by the pleadings. (Rec., 139, 143.)

It is proper to here note that *the question of whether or not the complainant had violated the anti-trust laws of the State of Illinois was not raised by the pleadings in this case; that no findings of the master were predicated thereon*, and that *none of the exceptions filed* to the master's report *specifically mentioned the said anti-trust laws of the State of Illinois or requested findings relating thereto.*

The Opinion of the Court.

The opinion of the court is as follows (Rec., 139):

> "This matter comes up on exceptions to the master's report. I believe both complainant and defendant have filed exceptions to certain affirmative holdings of the master, and both parties have also filed exceptions because the master failed to hold—omittted to hold—upon certain other questions. Without undertaking to specify the facts about this long list of exceptions, this record shows that complainant's bill was filed on September 18, 1900, seeking to enjoin the enforcement of an ordinance of the City of Peoria fixing the maximum rate for gas, which ordinance had been passed on the 4th day of the same month—September, 1900.

"The bill avers that the city council had no power to pass the ordinance; that the rate as fixed by the ordinance is unreasonably low; that its enforcement would deprive the complainant of its property without due process of law, and would deny to complainant the equal protection of the laws, thus raising a federal question on the Fourteenth Amendment to the Constitution of the United States. The answer of the city avers that the complainant has entered into an illegal combination or understanding with the old gas company; second, that whether that be so or not, the complainant is estopped to deny the the validity of this ordinance or the reasonableness of this rate by certain acts of its own at the time its franchise ordinance was passed; third, that the city council had power to pass the ordinance in question; and fourth, that the rate fixed was a reasonable one. I am of the opinion that the averment of the answer which I have first mentioned has been so fully proven by this record that it must be conclusive of the case. The Illinois anti-trust law, as construed by the Supreme Court of Illinois, leaves no doubt in my mind that this record shows, on the part of this complainant, a violation of that act. The manipulation of the stock of both companies, the use of the mains of both companies, the performing by complainant's servants of the business of both companies, the simultaneous agreement of rates between the officers of both companies, and the contract in evidence between the two companies,—all lead to the inevitable conclusion that there was an understanding between complainant and the old company such as the Illinois act prohibits. A court of equity will not assist complainant to reap the fruits of such unlawful combination. The exception on the part of

the city to that part of the master's report which omits to find in accordance with this view will be sustained, and I need not enlarge upon the other numerous questions raised by this record. The bill will be dismissed at complainant's costs. Counsel for the city may prepare the order."

Decree.

Subsequently a decree was entered, finding, among other things, that "the complainant unlawfully entered into a combination agreement or understanding with the Peoria Gas Light and Coke Company * * * to regulate or fix the price at which gas should be furnished people and citizens of the defendant, the City of Peoria, by the complainant, and the said Peoria Gas Light and Coke Company, contrary to and in violation of the *statutes of the State of Illinois, approved June 11, 1891, and in force July 1, 1891*; and that the complainant is therefore, without equity and that the injunction heretofore issued in this cause should be dissolved." (Rec., 142.) (Italics not in decree.)

Thereafter, in accordance with the provisions of the decree, a bond in the sum of $150,000 was filed by the complainant and an appeal perfected to this court.

ASSIGNMENT OF ERRORS.

1. The court erred in dismissing complainant's bill of complaint as amended, in manner and form as shown by the record of said suit and proceedings.
2. The court erred in refusing to grant the complainant the relief asked and prayed for in and by said com-

plainant's bill of complaint as amended and in not entering a decree in favor of complainant in accordance with the prayer therein.

3. The court erred in rendering its opinion and in finding therein that complainant was not entitled to equitable relief. (Opinion rendered February 8, 1904, and filed March 24, 1904.)

4. The court erred in holding in his said opinion as follows:

> "The Illinois anti-trust law, as construed by the Supreme Court of Illinois, leaves no doubt in my mind that this record shows on the part of this complainant a violation of that act in the manipulation of the stock of both companies, the use of the mains of both companies, the performing by complainant's servants of the business of both companies, the simultaneous agreement of rates between the officers of both companies, and the contract in evidence between the two companies, all lead to the inevitable conclusion that there was an understanding between complainant and the old company, such as the Illinois act prohibits. A court of equity will not assist complainant to reap the fruits of such unlawful combination. The exception on the part of the city to that part of the master's report which omits to find in accordance with these views will be sustained."

The court erred because—

a. Said anti-trust act of the State of Illinois was not applicable to the case under the pleadings, nor raised thereby.

b. If so applicable said anti-trust act is in conflict with and in violation of the provisions of the Constitution of the United States and the amendments thereto.

c. Complainant was not attempting "to reap the fruits of such unlawful combination," or seeking to have any rights enforced which arose out of the same.

d. No exception was filed by defendant raising this question.

e. Such conclusion is not warranted by the evidence.

5. The court erred in making the order of February 9, 1904, in which he ordered, adjudged and decreed

> "That the exceptions made and filed herein on behalf of the defendant City of Peoria against the failure of the special master, I. C. Pinckney, to find in his report on file herein, that the complainant prior to the commencement of this suit had formed entered into and become a party to an illegal and unlawful combination, pool, trust, combination or agreement with the Peoria Gas Light and Coke Company (the old gas company), should be and the same is hereby sustained."

6. The court erred in holding in final decree

> "That the complainant unlawfully entered into a combination, agreement or understanding with the Peoria Gas Light and Coke Company * * * to regulate or fix the price at which gas should be furnished the people and citizens of the defendant, the City of Peoria, by the complainant, and said the Peoria Gas Light and Coke Company, contrary to and in violation of the statute of the State of Illi-

nois, approved June 11, 1891, and in force July 1, 1891."

for the following reasons:

a. Such statu was not pleaded in defendant's answer.

b. No evidence had been introduced or offered under the same.

c. It had not been made the basis of any of defendant's exceptions to the report of the special master.

d. It had not been considered by the court in rendering its opinion of February 8th, or in the order of the court following such opinion on February 9, 1904.

e. Such finding in the decree as was not warranted by the evidence.

f. The said alleged illegal agreement or combination was not properly a defense to complainant's bill as amended, wherein it sought to enjoin the defendant City of Peoria from enforcing an ordinance which would deprive complainant of its property and rights contrary to the provisions of the Federal Constitution.

7. The court erred in sustaining defendant's exceptions, or any of them, to the facts found by the special master (said master having been appointed by agreement of the parties), and in neglecting and refusing to confirm the said report except as to the 5th exception taken by complainant thereto, and in thereby denying to complainant the protection afforded it by the Constitution of the United States and the amendments thereto.

8. The court erred in not holding that the ordinance of the City of Peoria in controversy in this case is in conflict with and violation of the provisions of Section 10 of Article I of the Constitution of the United States, and of the Fourteenth Amendment thereto, in that by the said ordinance, as appears from the evidence and from the report and findings of the special master, the complainant is—*first*, deprived of property without due process of law; *second*, deprived of and denied the equal protection of the law; *third*, that its private property is taken thereby for public use without just compensation; and *fourth*, that said ordinance impaired the obligation of a prior contract between said company and the city.

9. And the court further erred in refusing and neglecting as a court of equity to take cognizance of the case as disclosed by complainant's bill of complaint as amended, the evidence in support thereof, and the report of the special master, and instead of so doing dismissing the complainant's bill.

10. The court erred in admitting any evidence (complainant having specifically objected thereto) touching the question of an alleged illegal combination or understanding between complainant and the Peoria Gas Light and Coke Company, as such controversy was and is wholly collateral to and in no manner connected with the case made and the relief sought by complainant's bill, or raised by the answer.

11. The court erred in refusing to grant the relief

prayed for in the complainant's bill of complaint as amended and ordering a dismissal of the same at the cost of complainant.

BRIEF.

The questions for discussion in this court naturally present themselves in the following order:

I. Jurisdiction of the Federal Court.

II. The Jurisdiction of the Supreme Court on Appeal.

III. Consideration of the Decision of the Court Below.

IV. Consideration of the Merits of the Case.

I.

THE JURISDICTION OF THE FEDERAL COURT.

The jurisdiction of the Circuit Court was based solely upon the ground that the suit was one arising under the Constitution of the United States.

The bill alleged that the maximum price ordinance passed by the City of Peoria under delegated powers was such that it *impaired the obligation of the franchise contract* theretofore entered into between the complainant and the City of Peoria; and the bill further alleged that the enforcement of the maximum price ordinance would result in the *taking of complainant's property without just compensation and would deprive complainant of its property without due process of law.*

WHERE THE BILL OF COMPLAINT SETS UP BY APT AVERMENT THAT A MUNICIPAL ORDINANCE (PASSED UNDER STATE AUTHORITY) IMPAIRS THE OBLIGATION OF A CONTRACT OR DEPRIVES COMPLAINANT OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW, OR WITHOUT JUST COMPENSATION, OR DENIES TO COMPLAINANT THE EQUAL PROTECTION OF THE LAW, THERE IS PRESENTED A FEDERAL QUESTION OF WHICH THE FEDERAL COURT HAS JURISDICTION REGARDLESS OF CITIZENSHIP.

Joplin v. *Light Co.*, 191 U. S., 150.

City Ry. Co. v. *Citizens' Street Ry. Co.*, 166 U. S. 567.

Walla Walla v. *Walla Walla Water Co.*, 172 U. S., 1.

St. Paul Gas Light Co. v. *St. Paul*, 181 U. S., 142.

Vicksburg Water Works Co. v. *City of Vicksburg*, 185, U. S., 65.

City of Cleveland v. *Cleveland City Railway Company*, 194 U. S., 516.

Pacific Electric Co. v. *City of Los Angeles*, 194 U. S., 112.

This rule has been followed in numerous cases in the Circuit Courts and Circuit Courts of Appeals, some of which follow:

Los Angeles City Water Co. v. *City of Los Angeles*, 103 Fed., 711.

Haverhill Gas Light Co. v. *Barker*, 109 Fed., 094.

Cleveland Gas Light & Coke Co. v. *City of Cleveland*, 71 Fed., 610.

Indianapolis Gas Co. v. *City of Indianapolis*, 82 Fed., 245.

Mercantile Trust & Deposit Co. v. *Collins Park & Belt Ry. Co.*, 99 Fed., 812.

American Water Works & Guaranty Co. v. *Home Water Co.*, 115 Fed., 171.

Consolidated Water Co. v. *City of San Diego*, 93 Fed., 849.

Southwestern Missouri Light Co. v. *Joplin*, 101 Fed., 23.

Pacific Electric Co. v. *City of Los Angeles*, 118 Fed., 746.

1. THE FRANCHISE CONTRACT RELIED UPON BY COMPLAINANT.

In 1899 the City Council of the City of Peoria granted to complainant a franchise ordinance permitting it to construct and operate gas works within the City of Peoria, which said franchise ordinance is set forth in full in the bill of complaint. (Rec., 5–12.)

The franchise ordinance was passed under the powers delegated to municipalities by the Legislature of the State of Illinois, and contained in Clause 13, Section 1, Article V, chapter 24, of the Revised Statutes of Illinois, which reads as follows:

> "§ 1. The city council in cities, and the president and the board of trustees in villages, shall have the following powers: * * *
>
> "*Thirteenth*—To regulate the opening therein [in streets] for the laying of gas or water mains and pipes, and the building and repairing of sewers, tun-

nels and drains, and erecting gas lights, *Provided, however,* that any company heretofore organized under the general laws of this state or any association of persons organized, or which may be hereafter organized, for the purpose of manufacturing illuminating gas to supply cities or villages, or the inhabitants thereof, with the same, shall have the right, by consent of the common council (subject to existing rights), to erect gas factories, and lay down pipes in the streets or alleys of any city or village in this state, subject to such regulations as any such city or village may by ordinance impose."

The ordinance franchise of 1899 not only granted to complainant the right to construct and operate gas works, but contained other provisions, which made it clearly a contract between the city and the company. It provided, among other things, that the complainant should file a bond in the sum of $1,000 as indemnity against negligence during construction; that the work under the ordinance should begin within six months and be completed within eighteen months from the date of the acceptance of the ordinance; that $5,000 in cash should be deposited with the treasurer of the city to insure prompt work under the ordinance; that the company should *from time to time extend its mains upon request of the city*; and that the ordinance should take effect from and after its passage and acceptance thereof by the company and the filing and approval of the bond therein required. A formal agreement of acceptance was duly executed by the company and filed with the city. The bond and indemnity required by the ordinance were filed and ap-

proved by the city, and the ordinance became a binding contract between the city and the company; on the faith of which the company expended $450,000.

The franchise ordinance in question contained no provision as to the price to be charged by the company for gas. In the absence of specific provision in that regard the law is that the company is presumed to have the power to fix a reasonable price for its product.

When a corporation is chartered under the general incorporation law with the right to manufacture and sell gas, the right to charge a reasonable price is a right implied, and one that forms part of the charter contract with the state, which can not be impaired by legislation.

New Memphis Gas Light Company v. *City of Memphis*, 72 Fed. Rep. 952.

Cleveland Gas Light & Coke Company v. *City of Cleveland*, 71 Fed. Rep., 610.

Capital City Gas & Light Co. v. *Des Moines*, 72 Fed. Rep., 818. 829

People ex rel. St. Louis v. *Laclede Gas Company*, 102 Mo., 479.

The company contends that by implication of law its franchise contract gave to it the power to fix a reasonable price for its product.

THE IMPAIRMENT OF THE CONTRACT.

In the year 1900 the City of Peoria passed the maximum rate ordinance, the enforcement of which this suit seeks to enjoin.

This maximum rate ordinance is as follows (Rec. p. 17):

"AN ORDINANCE REGULATING AND FIXING THE MAXIMUM PRICE OF GAS IN THE CITY OF PEORIA.

Be it Ordained by the City Council of the City of Peoria:

SECTION 1. That the maximum price of gas furnished the City of Peoria, and the citizens thereof, and all consumers of gas therein, shall not exceed the sum of seventy-five (75 cts.) cents per thousand cubic feet; such gas so furnished to afford a light of not less than eighteen (18) candle power, to be measured and ascertained at the place of consumption in said city, by the most modern appliances known to science, for measuring the candle power of illuminating gas; and the Peoria Gas Light and Coke Company, and the Peoria Gas and Electric Company, and any other company, corporation, person or persons who are now, may hereafter furnish gas to consumers in the City of Peoria, are hereby authorized and empowered to charge all consumers of gas in said city a sum not in excess of seventy-five (75 cts.) cents per thousand cubic feet.

SEC. 2. That any company, corporation, person or persons who shall, in violation of the provisions of the preceding section, charge or require the City of Peoria, or any citizen thereof, or any consumer of gas therein, to pay for gas furnished it or them, or either of them, a sum in excess of seventy-five cents (75 cts.) per thousand cubic feet, or who shall furnish to said City of Peoria, or any citizen thereof, gas less than eighteen (18) candle power, shall be subject to a penalty of not less than twenty-five ($25.00) dollars, nor more than two hundred ($200.00) dollars for each and every offense.

SEC. 3. That any company, corporation, person or persons who shall remove any meter or meters

from the house, store, factory or premises of any consumer of gas in the City of Peoria, against the will and consent of such consumer of gas who is willing to pay for gas furnished him, it or them by any company, corporation, person or persons, the price established and fixed in Section One (1) of this ordinance, shall be subject to a penalty of not less than twenty-five dollars, nor more than two hundred ($200.00) dollars for each and every offense; *Provided, however*, that any company, corporation, person or persons furnishing gas to consumers in the City of Peoria, shall have the right to remove any meter or meters for the purpose of repairing the same, on condition that such meter or meters so removed shall be replaced or a new one substituted in its place within twenty-four (24) hours of the time of removal of any such meter or meters.

SEC. 4. This ordinance shall be in force and effect from and after its passage and due publication, as provided by law: *Provided*, that nothing herein contained shall impair the obligation of any contract in existence between the City of Peoria and either of said gas companies above mentioned.

SEC. 5. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed, subject to the proviso contained in Section Four (4) of this ordinance.

Passed in council this fourth (4) day of September, A. D. 1900.

HENRY W. LYNCH, *Mayor.*

ATTEST:

ROBT. M. ORR, *City Clerk.*"

The Common Council of the City of Peoria in passing the maximum rate ordinance relied upon the powers dele-

gated to it by the State of Illinois under Clause 13, Section 1, Article V, Chapter 24, of the Revised Statutes of Illinois, already quoted, and also under the police powers delegated to municipalities by the Illinois Legislature. Subdivision 66 of Section 1, Article V, Chapter 24, which reads as follows:

> "To regulate the police of the city or village, and pass and enforce all necessary police ordinances."

So far as the power to pass said maximum price ordinance is predicated upon Clause 13, Section 1, Article V, the city must rely upon the *same delegation of power under which it passed the original franchise ordinance*, and in this view the validity of the maximum price ordinance requires—

(1) That the power to fix rates is a continuing power, irrespective of the price which may be fixed in the original franchise ordinance when granted; or

(2) That where the franchise ordinance fails specifically to fix the rate, the city retains the power to legislate in that regard, with the right to exercise such power at any time in the future; or

(3) That said Clause 13 of Section 1 of the Cities and Villages Act delegates to cities independent authority to reduce rates at the pleasure of the common council.

The complainant contends that the franchise ordinance of 1899 constituted a contract, and that after the acceptance of such franchise ordinance any attempt of the city

to fix the price at which the company's product should be sold impaired the obligation of the contract so existing between the city and the company.

City of Cleveland v. *Cleveland City Ry. Co.*, 194 U. S., 517.

The city undoubtedly had the right under the statute to place a price in the franchise ordinance when granted, and the company could then have elected whether to enter into the contract tendered at the rate named therein.

But the city named no rate in the contract ordinance, and the company thereupon entered into the contract, thereby covenanting to furnish gas at the rate implied by law, to wit, a reasonable one.

It is respectfully insisted that the city, by failing to name a price in the franchise ordinance, did in fact write into said ordinance "a reasonable price" as effectually as though the rate was specifically fixed, and that thereby *it exhausted its power to legislate further with respect to the contract in question, especially as the theory of a "continuing power would result in violation of contract rights."*

If the power of the common council to pass the maximum rate ordinance be predicated upon the Police Power delegated to municipalities by the Cities and Villages Act, the ordinance none the less impairs the obligation of the franchise contract.

An ordinance, when accepted and acted upon, becomes

a contract and can not be annulled or amended without the consent of both parties.

City Ry. Co. v. *Citizens' St. Ry. Co.*, 166 U. S. 557.

People ex rel. City of Pontiac v. *Central Union Telephone Co.*, 192 Ill., 307.

Chicago Municipal Gas Light Co. v. *Town of Lake*, 130 Ill., 42.

City of Belleville v. *Citizens' Horse Ry. Co.*, 152 Ill., 171.

2. The Taking of Complainant's Property for Public Use Without Just Compensation, and Without Due Process of Law.

If, in the judgment of the Court, the action of the common council in passing the maximum rate ordinance did not impair the contract rights of complainant, an examination of the record conclusively shows that the *enforcement* of the maximum rate ordinance would result in the taking of complainant's property for public use without just compensation, and in denying to complainant the equal protection of the law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

The bill of complaint alleges, and the master found, that the cost to complainant of manufacturing and distributing gas in the Peoria territory (exclusive of interest on moneys actually invested) is in excess of the sum of 75 cents per thousand cubic feet, the maximum rate fixed by the ordinance, and that the City of Peoria, in passing such ordinance, exercised its delegated power

unreasonably, imposing such regulation upon complainant as to compel it either to abandon its business of manufacturing and distributing gas in the City of Peoria (a course prohibited by the price ordinance) or to suffer financial loss and injury in continuing it. The bill alleges, and the master found, that in other respects the ordinance in question is unreasonable, and that complainant will be unable to comply therewith. (Rec., 57, finding 14; Rec., 51, finding 12; Rec., 61, finding 25.)

It follows, therefore, that, whether the action of the City of Peoria be challenged because the city sought unlawfully to impair the obligation of the contract, or whether it be challenged because the city sought under delegated authority to modify a contract, but passed an unreasonable ordinance with respect thereto, the Federal Court would in either event take jurisdiction.

> *Walla Walla* v. *Walla Walla Water Co.*, 172 U. S., 1. and cases cited in this brief, pp. 19, 20, 29.

3. The Right to Equitable Relief.

Upon well-settled principles of equity jurisdiction and the repeated utterances of this court, the bill upon its face is clearly cognizable in equity.

The penal provisions of the ordinance, coupled with the averment that more than 2,000 consumers are served (Rec., 16), fully support the allegations of the bi llin regard to "innumerable suits and a multiplicity of actions."

That a court of equity has jurisdiction to restrain the enforcement of a void ordinance where such relief will

prevent a multiplicity of suits and where there is no sufficient or adequate remedy at law for the protection of property, is established by abundant authority.

If an ordinance is invalid, as in contravention of complainant's constitutional rights, a federal court of equity alone can declare it void and afford to complainant the complete relief to which it is entitled.

Where a municipality threatens to, and, unless restrained by law, will enforce the penal provisions of such an ordinance, a court of equity has power to restrain it.

The avoidance of a multiplicity of suits to defend against penal actions likely to be brought by thousands of consumers is alone sufficient ground for equitable interference.

Anticipation of such illegal action by the city or its citizens is of itself sufficient.

Smyth v. *Ames*, 169 U. S., 466.
C., M. & St. P. Ry. Co. v. *Minnesota*, 134 U. S., 418.
Ry. Co. v. *Gill*, 156 U. S., 649.
Vicksburg Water Works Co. v. *City of Vicksburg*, 185 U. S., 65.
Haverhill Gas Light Co. v. *Barker*, 109 Fed., 694.
Capital City Gas Co. v. *Des Moines*, 72 Fed., 829.
City of Chicago v. *Collins et al.*, 175 Ill., 445.
City of Cleveland v. *Cleveland City Ry. Co.*, 194 U. S., 517.
Walla Walla v. *Walla Water Co.*, 172 U. S., 1.

II.

THE JURISDICTION OF THE SUPREME COURT ON APPEAL.

The bill of complaint, as amended, contained the proper allegations in legal and logical form and presented a controversy arising under the Constitution of the United States.

While the opinion of the court below did not pass upon the merits of the case, and the decree dismissed complainant's bill upon a point wholly collateral to the issues, such dismissal nevertheless operated to deny to complainant the constitutional rights invoked by the bill of complaint, and an appeal, therefore, was taken to this court under Section 5 of the Judiciary Act of 1891 (26 Stat., 826, 827), on the ground that the case was one in which a law of a state (*i. e.*, a municipal ordinance) was claimed to be in contravention of the Constitution of the United States, and that such ordinance impaired the obligation of the contract contained in complainant's franchise ordinance, and also resulted in the taking of complainant's property without just compensation and without due process of law.

The courts have repeatedly decided that, where the bill shows a suit which does really and substantially involve a right which depends upon the construction or application of the Federal Constitution, then, even though the decision of the case in the court below turned upon some other point, and that court did not decide the federal question involved, *such question, nevertheless, remains*

in the case, and an appeal therefrom goes properly to the Supreme Court, and not to the Circuit Court of Appeals. The case is, therefore, properly in this court on appeal, although the Circuit Court did not decide the federal question involved.

Davis & Farnum Mfg. Co., v. *City of Los Angeles*, 189 U. S., 207.

City of Walla Walla v. *Walla Walla Water Co.*, 172 U. S., 1.

Hugeley Mfg. Co. v. *Galeton Cotton Mills*, 184 U. S., 290.

Loeb v. *Columbia Township*, 179 U. S., 472.

American Sugar Refining Co., v. *New Orleans*, 181 U. S., 277.

City of Dawson v. *Columbia Avenue Savings Fund, Safe Deposit, Title & Trust Co.* (*C. C. A., 5th Cir.*), 102 Fed., 200.

Owensboro v. *Owensboro Water Works Co.*, (*C. C. A., 6th Cir.*), 115 Fed., 318.

Westerly v. *Westerly Water Works Co.* (*C. C. A.*) 76 Fed., 467.

Moreover, the case being properly in this court on appeal, the whole case is open for consideration and review.

Davis & Farnum Mfg. Co. v. *City of Los Angeles* 189 U. S., 207.

Horner v. *U. S.*, 143 U. S., 570.

Chappell v. *U. S.*, 160 U. S., 499.

City Ry. Co. v. *Citizens' R. R. Co.*, 166 U. S., 557.

Holder v. *Aultman*, 169 U. S., 81.

Penn Mutual Life Ins. Co. v. *Austin*, 168 U. S., 685.

III.
CONSIDERATION OF THE DECISION OF THE COURT.

THE COURT BELOW ERRED IN HIS FINDINGS OF FACT.

While the court below held as a matter of law that the complainant had no standing in a court of equity, this conclusion could only have been reached by reason of an erroneous interpretation of the evidence, and it is, therefore, desirable to examine the findings of fact in the Court's opinion before addressing ourselves to the law.

It is proper for this court on appeal to look to the opinion of the lower court when the same is made a part of the record to ascertain the grounds of the decision,

Loeb v. *Columbia Township*, 179 U. S., 472.

That portion of the opinion of the court covering his findings of fact is as follows (Rec., 139):

> "*The Illinois anti-trust law* as construed by the Supreme Court of Illinois, leaves no doubt in my mind that this record shows on the part of this complainant a violation of that act in the *manipulation of the stock of both companies, the use of the mains of both companies, the performance by complainant's servants of the business of both companies, the simultaneous agreement of rates between the officers of both companies, and the contract in evidence between the two companies*, all lead to the inevitable conclusion that there was an understanding between complainant and the old company such as the Illinois act prohibits. A court of equity will not assist complainant to reap the fruits of such unlawful combination." (Italics not in opinion.)

Let us consider the Court's findings of fact *seriatim*:—

a. As to "*the manipulation of the stock of both companies.*"

There is absolutely nothing whatsoever in the record pertaining to the capital stock of The Peoria Gas Light and Coke Company (the old company). It does not appear that the complainant owns a single share of stock of the old company. It does not appear that any stockholder of the complainant owns a single share of stock of the old company.

The court apparently based its findings upon the *supposed* contents of the voting-trust agreement entered into by stockholders of complainant only, but which defendant and the court evidently imagined was also participated in by stockholders of the old company. (Defendant's exceptions, 45–49; Rec., 92.)

It is pertinent to observe that the so-called voting-trust agreement was not in evidence, although it appears from the record that the agreement was produced in court; was examined by the special master, and was ruled out by the special master as irrelevant and immaterial. (Rec., 1563.) It was clearly within the province of the defendant to have secured an order from the court directing the admission of the voting-trust agreement as evidence, if the defendant believed it to be competent, material or relevant. Upon the argument before the court the pool agreement was again discussed, and it was the duty of the court to place the instrument in evidence if it proposed to pass upon its contents. And again the court did not see fit to make a part of the

record an instrument which the court *failed to examine, but upon the supposed contents of which the court based its opinion.*

Moreover, the record does disclose that *the complainant was not a party, either directly or indirectly,* to the so-called voting-trust agreement. (Rec., 1563.)

b. As to "*the use of the mains of both companies.*"

It appears from the evidence that one of the old company's mains, which supplied the service pipes of about a half dozen customers, had become unfit for use; that the patronage of the half dozen customers did not then warrant the relaying of the main; that the old company made an arrangement with the complainant by which, instead of laying a new pipe at that time, the service pipes of the half dozen customers were attached to the mains of the complainant; that the old company collected from its half dozen customers the same as before and paid the amount of those bills to the new company—not turning over even this half dozen customers to the new company. (Rec., 696, 697.)

It appears from the record that the new company has upwards of 26 miles of mains; that the old company has upwards of 59 miles of mains. It appears that the customers of the new company number nearly 2,500, and that the customers of the old company number about 4,500. And yet, despite the magnitude of the operations and the properties of both companies, they are, by the opinion of the court, found guilty of conspiracy because the complainant accorded to the old company a courtesy which affected 6 gas consumers out of a total of 7,000

and 1 block of main out of a total of 85 miles. If the doctrine of *de minimis non curat lex* has no application here, we submit that the general equitable doctrine of *fairness* should relieve the complainant from censure.

c. As to "*the performing by complainant's servants of the business of both companies.*"

This statement in the opinion will be considered under paragraph "**e**" below, as the only services performed by complainant's employes for the old company were those under the contract therein considered.

d. As to "*the simultaneous agreement of rates between the officers of both companies.*"

It appears from the evidence that after a period of ruinous competition, during which gas was sold by both companies at a price greatly below the cost of production, some of the officers of the companies met in Chicago and it was suggested that both companies had been losing money long enough and that such prices ought to be made as would at least cause such loss to cease. Parties present upon the occasion in question testified positively that the only representative of the old company present was Mr. McKinley, and that he left the conference before any agreement was reached; that thereafter the new company determined upon a proper price to be charged and the old company followed suit. The evidence demonstrates that the rate so made was entirely reasonable and proper, and there is nothing in the record which shows that there was any *agreement* whatsoever between the companies to charge the same price or to

maintain the price so made. *Moreover, as a matter of fact, the rates of the two companies did not remain the same except for a period of about 90 days.* (Rec., 1353.)

Apart from statutory prohibition, there is no law to forbid corporations, even those enjoying public service franchises, from conferring in regard to charges and fixing upon the same rates, provided the rates so fixed and established are in themselves reasonable to the public.

U. S. v. *Trans-Missouri Freight Association*, Circuit Court of Appeals, 8th Dist., 58 Fed. Rep., p. 58.

Manchester & Lawrence R. R. Co. v. *Concord R. R. Co.*, 66 N. H., 100; 20 At., 383.

e. As to "*the contract in evidence between the two companies.*"

It appears that upon October 24, 1901, the old gas company entered into a contract with complainant whereby complainant agreed to manufacture gas and deliver the same into the holder of the old company for a limited period of time, while the old company was completing repairs to its plant. It further appears that the plants of the two companies were adjoining and that gas was delivered by the new company into the holder of the old company without the exercise of any public franchise or the use of any public property.

Had it not been for the fact that there was a competing company, with a finely equipped plant, contiguous to the plant of the old company, the latter company

would undoubtedly have completed its repairs, at some inconvenience to itself, without shutting down its plant. It deemed it the better business policy to effect the arrangement stated and to rebuild and renovate its plant under this arrangement, with the maximum of economy.

It is noteworthy that the contract in question was entered into more than a year subsequent to the filing of the bill of complaint in this cause; that it existed for a period of but ten months and was terminated more than a year before the court heard the arguments in this cause.

The facts as above stated are found to be true by the report filed herein by the special master (appointed by agreement of the parties), who took the evidence and saw and heard the witnesses. (Rec., p. 53.)

During this ten months' contract between the two companies all of the gas manufactured by the complainant for the old company was delivered into the holder of the old company and was by the old company sent through the mains of the old company to its consumers. The new company manufactured the gas required for its own consumers, placed the same in its own holders and distributed the same to its consumers. It was stipulated in this ten months' contract that the complainant's servants should perform certain duties for the old company at the expense of the old company. The contract provided for a certain price for the gas so manufactured and delivered to the old company, with a deduction for leakage, and the contract shows upon its face that the stipulations as to duties to be performed by complainants' servants

were inserted for the protection of the complainant in order that it might determine the amount of gas lost through leakage or otherwise and might place a check upon such waste by having charge of the reading of meters and the repairing of breaks in the mains of the old company.

It is an astounding doctrine, if such be the law, that a complainant, who comes into court with clean hands, can by a temporary act of business accommodation (*performed more than a year after the pleadings have been settled—and fully completed and abandoned more than a year before the hearing of the cause*) be denied rights guaranteed to it by the Constitution of the United States and which have heretofore been accorded even to the vilest criminal at the bar.

If the contract in question were vicious and pertinent to the issues in the case, the doctrine of *locus poenitentiae* would apply. As a benign contract and wholly collateral to the issues, it can not properly be made an excuse for denying to complainant its constitutional rights.

THE COURT BELOW ERRED IN APPLYING THE LAW TO THE FACTS SO ERRONEOUSLY FOUND BY HIM.

Whether or not there be any basis in the record for the statements in the Court's opinion, even a casual examination of the record will disclose that the Court's findings are neither pertinent nor proper under the pleadings in this case.

It is a fundamental rule of law that the illegality of corporate acts can not be raised collaterally, especially when the action is not one to enforce the illegal agreement, and no rights are predicated upon it.

Rector v. *Hartford Deposit Co.*, 190 Ill., 387–388.

New Memphis Gas Light Co. v. *City of Memphis*, 72 Fed. Rep., 952.

Lafayette Bridge Co. v. *City of Streator*, 105 Fed. Rep., 729.

L. S. & M. S. Ry. Co. v. *Smith*, 173 U. S., 698.

Gilbert for use v. *American Surety Co.* (*C. C. A.*, 7th Circuit), 121 Fed., 494.

Connolly v. *Union Sewer Pipe Co.*, 184 U. S., 450; 46 L. Ed., 679.

Macginnis v. *B. & M. Con. Co.* (Mont.), 75 Pac. 89.

Kinner v. *L. S. & M. S. Ry. Co.*, 69 Ohio St., 376.

Planters Bank v. *Union Bank*, 16 Wall., 483; 21 L. Ed., 473.

Strait v. *Nat. Harrow Co.* (C. C.), 51 Fed., 819.

Dennehy v. *McNulta*, 30 C. C. A., 422; 86 Fed., 825.

The Charles E. Wiswall Co. v. *Scott*, (C. C. A., 2nd Circuit), 86 Fed., 671.

National Folding Box and Paper Co. v. *Robertson*, (C. C.), 99 Fed. 985.

Harrison v. *Glucose Sugar Refining Co.*, 53 C. C. A., 484; 116 Fed., 304.

A fortiori, a collateral attack will not be permitted even under a special statute, if the statute is not pleaded or its

inhibition challenged by the issues in the case, especially where the remedy given by the statute is cumulative and differs from or is in addition to that given by the common law. Moreover, such defense must be set up by plea and not by answer.

Chicago & Alton Ry. Co. v. *Dillon*, 123 Ill., 570.

Haskins v. *Alcott*, 13 Ohio State, 210.

Denton v. *Moore's Administrator*, 2 Tenn., 168.

Neagle v. *Kelley*, 146 Ill., 465.

Chambers v. *Chambers*, 4 Gill. & Johnson's Rep. (Md.), 438.

New Jersey Patent Tunning Co. v. *Turner*, 14 N. J. Eq., 329.

Curtis v. *Mastin*, 11 Paige's Chancery Rep. 15.

Dyer v. *Lincoln*, 11 Vt., 301.

1 Daniel's Chancery Pleading and Practice, 5th Ed., 630.

Farley v. *Kittson*, 120 U. S., 303, and cases cited.

Sullivan v. *Portland, etc., R. R.*, 94 U. S., 806.

Dey v. *Dunham*, 2 Johnson Ch. (N. Y.), 182.

Crutcher v. *Trabue*, 5 Dana (Ky.), 82.

Hudson v. *Hudson's Admr.*, 6 Munford (Va.), 352.

Prince v. *Heylin*, 1 Atkins, 494.

The principle above contended for, except so far as the foregoing cases relate to formality in pleadings, has been upheld in numerous cases in which foreign corporations seeking to recover or protect their property have been met by the defense that they had violated or failed to

comply with the provisions of some local statute in compliance with which only would they have the right to do business in such State.

Smith v. *Little*, 67 Ind., 549.
St. L. etc. R. R. Co. v. *Fire Association of Philadelphia*, 60 Ark., 325.
Schlitz Brewery Co. v. *Ester*, 86 Hun (N. Y.), 22.
Delaware, etc., Telegraph & Telephone Co. v. *Pesauken Twp.*, 116 Fed., 910.

Such collateral attack is expressly forbidden in the Federal Courts since their jurisdiction is not conferred, and it can not be withdrawn or limited, by the legislation of the States.

Blodgett v. *Lanyon Zinc Co.*, 120 Fed., 893.

In this connection it is pertinent to observe that the record may be searched in vain to find a single specific reference to the Illinois Anti-Trust Statute of 1891, either in the pleadings, the evidence, the Master's report or the exceptions thereto.

It is also well established by the authorities that a defense must either be technically pleaded or the facts constituting such defense must be properly alleged and relied upon on the hearing of the cause in support of such defense.

Eyre v. *Potter*, 15 How. (U. S.), 42.
French v. *Shoemaker*, 14 Wall. (U. S.), 314.
Babbitt v. *Dotten*, 14 Fed., 19.
Spies v. *Chicago, etc., R. R. Co.*, 40 Fed., 34.
Britton v. *Brewster*, 2 Fed., 160.
Affirmed in 4 Fed., 808.
Price v. *Berrington*, 15 Jurist, 999.
7 Eng. L. & Eq., 254.

Wilde v. Gibson, 1 H. L. Cases, 605.
Ferraby v. *Hobson*, 2 Phillips, 255.
Curson v. *Belworthy*, 3 H. L. Cases, 742.
Connecticut Fire Ins. Co. v. *Kavanaugh*, 1892, A. C. 473.
Harrison v. *Guest*, 8 H. L. Cases, 481.
Hickson v. *Lombard*, 1 H. L. Cases, 324.
Tillinghast v. *Champlin*, 4 R. I., 173.
Fisher v. *Boody*, 1 Curtis (U. S.), 206.
Dashiell v. *Grosvenor*, 66 Fed., 334, affirmed in 162 U. S., 425, but not deciding this point.
Leighton v. *Grant*, 20 Minn., 345.

The Court should also note that the only evidence in the record upon which the Court might hang its finding of a violation of the anti-trust act was introduced in support of a distinct issue, which issue did not involve the Illinois anti-trust statue of 1891, but was the issue of estoppel. Moreover, the Court in its opinion specifically declined to consider the defense of estoppel.

In defendant's answer (Rec., 21) it is alleged that the complainant in obtaining its franchise ordinance had represented that it would compete with the old gas company in Peoria. The answer charges that these representations were violated, and avers (Rec., 26) "upon information and belief that *an agreement and understanding* now exists between said corporations that they will not compete for the sale of gas and that the price therefor shall be determined only upon mutual agreement. * * * Respondent charges that said agreement and combination was and is in direct violation of the representations and

agreements of said Peoria Gas and Electric Company with the citizens of said City of Peoria and the common council of said city when said ordinance was obtained."

It will be observed that the answer does not even charge complainant with any "*unlawful*" agreement or understanding, but merely makes the averment (upon which the court predicated his anti-trust decision) in support of the defendant's plea of estoppel—which plea of estoppel was fully considered by the master and disposed of in his report adversely to defendant. (Rec., pp. 50, 61.)

Even were it permissible to set up the Illinois Anti-Trust Statute of 1891 *collaterally, and even though such act had been specifically set forth in the answer, it would not have been a proper defense in this case.*

The only possible purpose for which a violation of the Illinois Anti-Trust Statute of 1891 might be urged would be:

(1) For the purpose of inflicting upon complainant the criminal penalties of the act.

(2) To show that complainant was a criminal under, the act.

The criminal penalties of the act could not be inflicted in this proceeding, and, though inflicted, would not constitute a defense in the case.

The Illinois Anti-Trust Act of 1891 (Starr & Curtis, Vol. 1, 2d edition, p. 1252) is as follows:

"An act to provide for the punishment of persons, copartnerships or corporations forming pools, trusts and combines, and mode of procedure and rules of evi-

dence in such cases. (Approved June 11th, 1891. In force July 1st, 1891. L. 1891, p. 206.)

"Pools, trusts and combines described. Sec. 1.

"*Be it enacted by the people of the State of Illinois, represented in the General Assembly.* If any corporation organized under the laws of this or any other State or country, for transacting or conducting any kind of business in this State, or any partnership or individual or other association of persons whosoever, shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person, or association of persons, to regulate or fix the price of any article of merchandise or commodity, or shall enter into, become a member of or party to any pool, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this State, such corporation, partnership or individual or other association of persons shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to indictment and punishment as provided in this Act.

"2. Organization or combination and issue of trust certificates prohibited. Art. 2. It shall not be lawful for any corporation to issue or to own trust certificates, or for any corporation, agent, officer or employees, or the directors or stockholders of any corporation to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in

the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

"3. Violations of act—penalty. Art. 3. If a corporation or a company, firm or association shall be found guilty of a violation of this act it shall be punished by a fine in any sum not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000) for the first offense, and for the second offense not less than two thousand dollars ($2,000) nor more than five thousand dollars (5,000), and for the third offense not less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000), and for every subsequent offense and conviction thereof shall be liable to a fine of fifteen thousand dollars ($15,000); provided, that in all cases under this act either party shall have the right of trial by jury.

"4. Officer, agent or receiver of corporation, individual, etc., violating act. Art. 4. Any president, manager, director or other officer or agent or receiver of any corporation, company, firm or association, or any member of any company, firm or association, or any individual found guilty of a violation of the first section of this act may be punished by a fine of not less than two hundred dollars ($200), nor to exceed one thousand dollars ($1,000), or be punished by confinement in the county jail not to exceed one year, or both, in the discretion of the court before which such conviction may be had.

"5. Contracts, etc., violative of act, void. Art. 5. Any contract or agreement in violation of any provision of the preceding sections of this act shall be absolutely void.

"6. Purchasers of product or manufacture violating

act discharged from payment. Art. 6. Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provision of the preceding sections of this act shall not be liable for the price or payment of such article or commodity, and may plead this act as a defense to any suit for such price or payment.

"7. Fines—recovery. Art. 7. The fines hereinbefore provided for may be recovered in an action of debt in the name of the people of the State of Illinois. If, upon the trial of any cause instituted under this act to recover the penalties as provided for in Section 3, the jury shall find for the people, and that the defendant has been before convicted of a violation of the provision of this act, they shall return such finding with their verdict, stating the number of times they find defendant so convicted, and shall assess and return with their verdict the amount of the fine to be imposed upon the defendant in accordance with said section 3; provided, that in all cases under the provisions of this act, a preponderance of evidence in favor of the people shall be sufficient to authorize a verdict and judgment for the people."

It is apparent on the face of the act that its penal provisions are enforceable only by the State through its judicial department.

The defenses sanctioned by the act are especially enumerated, and do not include the idea of relief in an action such as the one at bar.

An examination of the bill of complaint discloses that complainant does not seek relief under any contract prohibited by the Illinois anti-trust act; that is to say, the complainant does not attempt to enforce any rights predicated upon the alleged combination.

Moreover, section 6 of the act, if violated by complainant, would be available for defense only in case of a consumer of gas being sued by complainant for the price thereof; and, even in such a case, the consumer could not fix the price he would pay. It would be the contract price or nothing.

If complainant had violated the Illinois Anti-Trust Law of 1891, or any other criminal statute, such fact would not bar the rights of complainant in this suit.

The contrary has long since been set at rest by decisions in this very circuit.

Gilbert v. *American Surety Co.*, 121 Fed., 494.

Star Brewery Co. v. *United Breweries Co.*, 121 Fed., 713.

Connolly v. *Union Sewer Pipe Co.*, 184 U. S., 540,

and by the following cases:

Armstrong v. *American Exch. Bank*, 133 U. S., 433.

Planters' Bank v. *Union Bank*, 16 Wall., 483.

Armstrong v. *Toler*, 11 Wheat. (U. S.), 258.

Brooks v. *Martin*, 2 Wall. (U. S.), 70.

Sharp v. *Taylor*, 2 Phillips' Ch., 801.

McBlain v. *Gibbs*, 17 How. (U. S.), 232.

In the absence of a finding in a direct proceeding that complainant had violated the Illinois Anti-Trust Act of 1891, the position taken by the court below amounts at most to a charge that complainant being deemed by the court to be a criminal, does not come into court with "clean hands," and, therefore, is not entitled to equitable relief.

The doctrine that "he who comes into equity must come with clean hands" is subject to well-defined limitations, and under the limitations of that doctrine the maxim is not applicable to the facts in this case, because

a. The illegal acts charged in the court's opinion are not connected with the matter in litigation so that they in any manner affect the equitable relations subsisting between the two parties at the time the suit was commenced, and,

b. All of such acts, except the circumstance of the change of price on August 1, 1900, took place after the commencement of the suit.

Moreover, the maxim above noted is always confined to misconduct in regard to or at all events connected with the matter in litigation, so that it in some measure affects the equitable relations subsisting between the two parties and arising out of the transaction. When a court of equity is appealed to for relief, it will not go outside of the subject matter of the controversy and make its interference depend upon the conduct of the moving party as to matters in no way affecting the equitable right which he asserts against the defendant or the relief which he demands.

Pomeroy's Equity Jurisprudence, sec. 399.

Lewis Appeal, 67 Penna. St., 166.

Woodward v. *Woodward*, 41 N. J. Eq., 224.

Liverpool & London, etc., Ins. Co. et al. v. *Clunie* (C. C. Cal.), 88 Fed., 160.

Bateman v. *Fargarson* (C. C. Tenn.), 4th Fed., 32.

City of Chicago v. *Union Stockyards Co.*, 164 Ill., 224.

Trice v. *Comstock*, 121 Fed., 620.

National Folding Box Co. v. *Robertson* (C. C. Conn.) 99 Fed., 985.

Bonsack Machine Co. v. *Smith*, (C. C. N. C.) 70 Fed., 383.

Coeur D'Alene, &c., Mining Co. v. *Miners Union* (C. C. A. Idaho) 51 Fed., 260.

The Charles E. Wiswell (C. C. A., 2d Cir.) 86 Fed., 671.

Knapp v. *Jarvis Adams Co.* (C. C. A., 6th Cir.) 135 Fed., 1,008.

Harrison v. *Glucose Sugar Ref. Co.* (C. C. A., 7th Cir.) 116 Fed., 304.

Yale Gas Stove Co. v. *Wilcox*, 64 Conn., 101.

Delaware Surety Co. v. *Layton*, (Del. 1901) 50 St. 378.

Deering v. *Earl of Winchelsea*, 1 Cox, Ch. 318.

Barton v. *Mulvane*, 59 Kan. 314.

Kinner v. *L. S. & M. S. Ry. Co.* 69 Ohio, St. 339.

Foster v. *Winchester*, 92 Ala., 497.

Wiley National Wall Paper Co., 70 Ill. App., 543.

It is enough, we submit, that the Illinois Anti-Trust Act of 1891 permits the purchaser of goods to retain the commodity and refuse payment therefor, under a strict enforcement of said penal statute. And this Court will not extend the scope of said penal statute under such circumstances,—because Federal Courts have repeatedly held that it is not "public policy," but, rather, "public scandal," to uphold a dishonest act, and to permit a litigant to present a dishonest defense.

Gilbert, use etc., v. *American Surety Co.*, 121 Fed. 499.

Connolly v. *Union Sewer Pipe Co.*, 184 U. S., 540.

Dennehy v. *McNulta*, 86 Fed., 827.

Lafayette Bridge Co. v. *City of Streator*, 105 Fed., 792.

and other cases cited by Judge Jenkins in the Gilbert Case *supra*, at page 503.

And in enforcing a statute of this character the Federal Court is not bound to follow the decisions of the State Courts, but in determining whether or not such provisions are contrary to the general law or public policy or the Federal Constitution, it willl make and follow its own decisions.

Jefferson Bridge Co. v. *Skelly*, 66 U. S., 436.

United States ex rel Butz v. *City of Muscatine*, 75 U. S., 575.

Wright v. *Nagle*, 101 U. S., 791.

L. N. R. R. Co. v. *Palms*, 109 U. S., 244.

Scott v. *McNeal*, 154 U. S., 34.

Gormley v. *Clark*, 134 U. S., 338.

Ex parte Tyler, 149 U. S., 187.

IV.

CONSIDERATION OF THE MERITS OF THE CASE.

As heretofore stated, the bill of complaint presented the following issues:

The maximum price ordinance of 1900 was alleged

to be in contravention of the Constitution of the United States, in that—

a. Its operation would impair the obligations of the franchise contract of complainant with the City of Peoria.

b. Its enforcement would result in confiscating the property of complainant and taking its property without due process of law and without just compensation, and in denying to complainant the equal protection of the law.

The defendant accepted the issue tendered, and in addition presented the following issue for a defense, to wit: That complainant was estopped from invoking the protection of the Constitution of the United States.

In so far as the validity of the ordinance complained of turned upon its unreasonableness, the complainant sought to establish its position by presenting evidence with respect to the cost of manufacturing and distributing gas, and it conceived that the proper elements to be taken into consideration in determining such cost, were:

1. The cost of a suitable plant.

2. Actual cost of the manufacture and delivery of gas per thousand cubic feet, exclusive of depreciation and interest on the investment.

a. The cost of raw material from which gas is manufactured.

b. The cost of labor involved in the manufacture of gas.

c. The cost of distributing gas when manufactured.

d. The cost of administration, repairs and maintenance.

e. Allowance for the value of residuals produced.

3. The losses occasioned by depreciation.

4. The hazards of the business.

5. The requirements for an adequate return on moneys actually invested.

1. *The cost of a suitable plant:* Complainant, in support of the inquiry as what would be the proper cost of a manufacturing plant and distributing system suitable for carrying on its business, introduced evidence showing the actual cost of complainant's plant. This plant was new and vouchers were introduced covering every dollar expended in the construction of the plant, and amounting to $434, 252.35. (Rec., 164, 349.) Expert gas engineers and contractors were placed upon the stand and testified:

a. That the *cost* of complainant's plant was in fact less than would ordinarily be required in the construction of a similar plant, owing to the fact that it was built under favorable conditions both as to the price of labor and materials.

b. That the *fair market value* of complainant's plant at the time of the filing of the bill of complaint was in excess of $450,000, exclusive of any value contained in its franchise.

c. That complainant's plant was admirably adapted for complainant's business, and was of proper size and modern in every detail.

2. *Actual cost of the manufacture and delivery of gas per thousand cubic feet exclusive of depreciation and interest on the investment.*

Upon the question of cost of manufacture and delivery of gas, the defendant introduced its operating statements (Rec. 350–353 and 667–691) from the date of the completion of the plant up to the time of the filing of the bill of complaint, and also from the time of filing the bill of complaint to the date of the closing of evidence in this case. These operating statements accompanied in every case, by the detail vouchers, showed the actual cost of every material entering into the production of gas, the actual cost of labor employed, the actual amount of gas produced, the actual amount of residuals obtained, and the price at which the residuals were sold, thus enabling the master to compute with absolute accuracy the actual cost of every foot of gas produced.

In addition to this, the complainant presented the testimony of experts in the manufacture of gas and the management of gas plants, and demonstrated that the results achieved in the operation of complainant's plant were of the highest order, both as to quantity, quality and economy of production.

3. *The losses caused by depreciation.*

In treating the subject of depreciation the complainant produced expert testimony showing that depreciation is an element of expense entirely distinct from repairs and maintenance, and is occasioned by the following elements and forces.

a. Natural destruction occasioned by the action of the elements, including natural wear and tear.

b. Special destruction occasioned by the disintegrating chemical vapors about a gas plant.

c. Antiquation, resulting from the fact that new improvements and inventions, require the replacement of apparatus as a measure of economy and to avoid the introduction of competition.

d. Arbitrary changes of grade by city councils requiring the system of mains to be either lowered or raised at various points, or abandoned.

e. Shifting of residence and business localities requiring, *e. g.*, a four inch main to be replaced by a sixteen inch main, or putting the work of a four inch main on a sixteen inch main.

f. Damage to the system of mains by street improvements, such as the building of sewers, the laying of water pipes, and other occupation of the streets.

g. The necessity of remodeling or abandoning and rebuilding an entire plant to meet the increasing requirements of a growing city from time to time.

Upon the question of depreciation, it appeared that the annual charge required to meet the same would average about six and one-half per cent.

4. *The hazards of the business and the proper interests return in view thereof.*

Upon the hazards of the business like testimony was introduced showing the difference in risk between an investment in real estate securities or other like collaterals

and an investment in a manufacturing industry, and especially a gas plant. It was urged by complainant, and supported by the testimony, that inasmuch as complainant was asking for an adequate return not upon its capital stock nor upon any bond issue, nor upon any amount of indebtedness which might exist, but merely upon the actual money invested, to wit, the actual cash which would be required to reproduce its investment at the time of the passage of the ordinance in question, it was fitting that the hazards of the business should be considered in determining what would be an adequate income to be derived from the moneys invested.

Among the hazards taken into account by the various expert witnesses may be mentioned the following:

a. Competition of other forms of light and heat, including natural gas.

b. Explosions, asphyxiation, and similar accidents peculiar to the business.

c. New inventions, revolutionary in character, which destroy the value of the property, as distinguished from mere antiquation.

d. Hazards occasioned by city government changing its public lighting system from gas to electricity, or otherwise resulting in the absolute destruction of the investment, represented by the entire public lighting system.

e. Electrolysis, *i. e.*, the destruction of mains through the action of vagrant electric currents from electric street railroad systems, &c.

f. Permanent and fixed character of the investment and limited field of operation preventing the removal of the "stock in trade" to more favorable localities.

g. Immense capital invested as compared with the receipts of the business.

h. Ill-advised municipal and state legislation.

The concensus of opinion among the witnesses established the proposition that if ordinary real estate mortgages secured upon income-bearing property, having a value of twice the amount of the loan, having a varied use and carrying adequate insurance, called for the return of from four to six per cent. upon the moneys invested therein, it must follow that an investment in a gas property containing no margin of security and subject to peculiar hazards should bring a return of from eight to ten per cent. upon the moneys therein actually invested.

The Report of the Special Commissioner fully Sustains the Contentions of Complainant on all Points Necessary to the Relief Sought, and such Report Should be Confirmed without Remanding the Cause.

The gist of the Special Commissioner's Report is as follows:

(1) The maximum rate ordinance was passed under State authority.

(2) The maximum rate fixed by the ordinance was so unreasonably low that the enforcement of the ordinance

would result in the taking of complainant's property for public use without just compensation and without due process of law, and in denying to complainant the equal protection of the law.

(3) That, therefore, the maximum price ordinance was void, and complainant was entitled to the relief sought by the bill, and that "an injunction should be allowed, perpetually enjoining the defendant, its officers and agents from enforcing, or attempting to enforce, the provisions thereof against complainant, as prayed in and by its bill herein." (Rec., p. 62.)

It will be observed that the decree of the court below did not overrule or modify the findings of the Special Commissioner in regard to any matters pertinent to the relief sought by complainant. It is, therefore, respectfully submitted that the findings of fact and law made by the Special Commissioner stand to the same extent as if recited in the final decree of the court below; and when the ground upon which the court below denied equitable relief fails, the report of the Special Commissioner remains as the judgment of the court in this cause. This view is entitled to unusual consideration, inasmuch as the Special Commissioner was appointed by agreement of the parties—the effect of which circumstance is discussed in this brief at page 72 *post*.

Moreover, all of the exceptions filed by the defense are general in their character, and none of them are supported by special statements of the Commissioner, or by reference to the evidence bearing on the exceptions relied upon by defendant.

Exceptions are to be regarded only so far as they are supported by the special statements of the Commissioner or by a reference to the particular testimony on which the exceptant relies.

Harding v. *Handy*, 11 Wheaton, 103–126.
Jaffrey et al. v. *Brown* (C. C. Ga.), 29 Fed., 476.
Green v. *Bishop*, 1 Clifford, 186.
Bridges v. *Sheldon*, 18 Blatchford, 295–307.
Lockhart v. *Horne*, 3 Woods, 542.

Believing, therefore, that the master's report should be approved, it is desirable to present for the consideration of this court—

THE FINDINGS OF FACT MADE BY THE SPECIAL MASTER.

The findings of the special commissioner upon the facts may be summarized as follows:

1. That complainant constructed a gas plant in a suitable locality and laid twenty-six and one-half miles of mains for distribution of gas, and commenced distribution about May 1, 1900. (Rec., p. 46.)

2. That at the time of the institution of this suit it had installed about two thousand service pipes and had in use 1,758 meters—these service pipes being installed and the meters set without charge to consumers. (Rec., p. 47.)

3. That the actual cost of complainant's plant and distributing system was $434,252.35 (Rec., p. 47.)

4. That the plant so constructed was well designed

for the prudent and economical manufacture of coal gas, and represented the highest efficiency, not only for the economical production of gas, but also for the production of the valuable by-products known as coke, coal tar and ammonia liquor, the sale of which tends to reduce the net cost of the manufacture of coal gas. (Rec., p. 47.)

5. That up to the time that complainant secured its charter from the State, the prices fixed by the old gas company were, for illuminating gas, $1.35 gross, or $1.25 net per thousand cubic feet if paid on or before the 10th day of the month next following and 75 cents net per thousand cubic feet for fuel gas. (Rec., p. 47.)

6. The cost of the production of coal gas can not be ascertained by any fixed standard; the cost of raw materials necessary to its production are variable. Necessary labor in the successful operation of complainant's plant including its distributing system and also its manufacturing plant, have no fixed, invariable scale. The market value of residuals obtained is likewise an uncertain feature (Rec., p. 51.)

7. Depreciation exists and continues in a coal gas plant notwithstanding repairs that are necessary to be made to maintain its working efficiency, and it is an expense in the cost of the manufacture and distribution of gas that is outside of and in addition to repair expenses. (Rec., p. 52.) "The depreciation of a manufacturing coal gas plant, under the evidence in this case, may be conservatively found to be five per cent. per annum on the first cost." (Rec., p. 51.)

8. Commissioner's finding number 17 (Rec., p. 52):

"The first cost to complainant in the manufacture and distribution of coal gas in the City of Peoria may be said to be covered by the following charges, viz :

Interest at the rate of five (5) per cent. per annum on the cost of its manufacturing plant and distributing system, which at the close of the taking of testimony in this case was $439,725. This sum represents its fair market value, and only the money then invested therein by complainant; also depreciation at the rate of five (5) per cent. per annum on the cost of the manufacturing plant less the price paid for the real estate on which it is located; five (5) per cent. per annum depreciation on the cost of the service connections installed; nine (9) per cent. per annum depreciation on the cost of consumers' meters; five (5) per cent. per annum depreciation on the amount invested in tools, furniture and fixtures; two (2) per cent. per annum depreciation on the cost of distributing mains; also the cost of the material used; necessary labor; repairs to system; leakage or unaccounted for gas as shown by the difference of registration in the station meter register and consumers' meters; uncollectible accounts, taxes and office expenses."

Commissioner's finding 18. (Rec., p 52.):

"From the cost as so ascertained should be deducted the value of residuals obtained from each ton of gas coal carbonized."

In the presentation of its case before the special commissioner, complainant was somewhat embarrassed from

the fact that in none of the so-called rate cases in which legislatures or municipalities had fixed maximum rates to be charged by railroads, street railroads, gas or water companies, were the various elements of a reasonable rate so organized as to permit the classification of such cases with reference to any particular element of cost. The last mentioned findings of fact involve the consideration of the law under which the federal courts have heretofore acted in determining upon the reasonableness of rates in the cases before them. Some of the cases which follow include a discussion of the reasonableness of the rates generally, while others include several of the elements of cost as we have classified them. The following cases taken together, we respectfully submit, are a sufficient warrant for this finding of the special commissioner.

Smith v. *Ames*, 169 U. S., 466.

Reagan v. *Farmers Loan & Trust Co.*, 154 U. S., 362.

New Memphis Gas Co. v. *City of Memphis*, 72 Fed., 952.

Clyde v. Richmond & Danville Ry. Co., 57 Fed., 436.

Covington & Lexington Turnpike Road Co. v. *Sandford*, 164 U. S., 578.

So. Pacific Co. v. *Board of Railroad Commissioners of Cal.*, 78 Fed., 236.

San Diego Land and Town Co. v. *National City*, 74 Fed., 79.

Milwaukee Electric Ry. & Light Co. v. *Milwaukee*, 87 Fed., 577.

Bryner, et. al. v. *Butler Water Co.*, 179 Pa., 231; 36 L. R. A., 260.

San Diego Water Co. v. *City of San Diego* (Cal.), 38 L. R. A., 460.

together with the numerous cases cited in this brief, pp. 19, 20, where the question is discussed as to the impairment of contract obligations and the confiscation of property through unreasonable regulation.

9. The gas manufactured by complainant from September 1, 1900 (the date of the maximum price ordinance), up to September 1, 1901, as shown by the evidence, cost the complainant in the holder, per thousand cubic feet, 77 9-10 cents after deducting from the cost of production, the market value of all residuals obtained from the coal carbonized. The cost was upon the basis of an output of about fifty-one million cubic feet per year, and does not include the cost of distribution (Rec., p. 53) nor depreciation; nor the hazards of the business; nor interest on the investment.

10. It appears from the evidence that complainant company is capitalized at two million dollars, on no part of which have the holders of its stock ever received any dividends whatever, nor have any been declared by its managing board. The salaries of its officers do not seem to be extravagant or in excess of the amount usually paid by others engaged in like business enterprises; the vice-president of the company, being also its active business manager. Its working capital, comprised of its bills receivable and cash on hand is not in excess of the

amount required to enable it to take advantage of favorable market prices for the material entering into the production of coal gas. *It is not seeking in this case the right to charge for gas a price that will enable it to pay dividends on its capital stock.* (Rec., p. 55.)

11. Commissioners' Finding 26 (Rec., p. 55.):

> *"At the close of the taking of the evidence in this cause complainant's manufacturing plant and distributing system were in a high state of working efficiency as regards the economical manufacture and distribution of coal gas; the management of its affairs, skillful and prudent; yet notwithstanding these favoring conditions, it is conclusively shown by the decided weight of the evidence, that the income it would receive from the sale of gas as shown by consumers' meters in use, at the rate of seventy-five cents per thousand cubic feet, together with the market value of all residuals produced per ton of coal carbonized, will not yield an income sufficient to meet the amount of actual depreciation to its plant, the expenses incident to the making of necessary repairs thereto, and a normal interest charge on the amount of money invested in such plant."*

And it will be observed that the commissioner refused to consider the item of "hazards of the business" in arriving at a normal interest charge (Rec., p. 55).

A Further Unreasonable Provision of the Ordinance.

It was contended by complainant in its bill of complaint that the provision of the maximum price ordinance requiring complainant to furnish gas of eighteen candle power at the *place of consumption* was unreasonable and impossible of performance.

Upon this contention, supported by the evidence, the commissioner made the following finding:

Commissioner's finding 12 (Rec., p. 51):

> "The license granted by the defendant, the City of Peoria, on April 18, 1899, contains no requirements as to the candle power of gas to be furnished by complainant, neither is it practicable under the present method of conveying gas from the place of manufacture to a point of consumption to maintain eighteen candle illuminating power at all points of consumption without the excessive use of enrichers in its manufacture. Where this is attempted by the producer it results in discomfiture to the consumer by smoking when ignited and the giving off of unpleasant odors."

The Arbitrary and Ill-considered Action of the City Council in Passing the Ordinance.

Upon the question of the good faith of the City Council in passing the maximum-rate ordinance, the master found (Findings of Fact, No. 11, Rec., p. 50).

> "The ordinance in controversy in this case was not passed by the Common Council of the City of Peoria for about eighteen months after the time that complainant procured its original license from the city. At the time the ordinance fixing the maximum price of gas was pending, and before its adoption by the City Council, it appears complainant, through one of its officers, stated to the Mayor of Peoria and to some of the members of the City Council that gas could not be made by it at the maximum price fixed by this ordinance, and the Mayor was then requested either personally or through any representative of

the city he might select to make an examination of the books of the complainant to ascertain, for the guidance of the council, what it was then costing complainant to manufacture gas, and what would be the probable cost in the future. *There is no evidence in the record in this case showing or attempting to show that the defendant ever sought the opportunity or privilege of making any investigation of complainant's books that had been offered it for the express purpose of guiding its legislative body in fixing in the ordinance it then had under consideration reasonable and fair rates to be charged for gas in the city.* Nor is there one word of testimony in denial that such an opportunity was tendered it by the complainant, nor is there any evidence that defendant had knowledge on this subject from any other source."

The foregoing conclusion gives an added touch of viciousness to the ordinance, it being the law that the city must exercise its right to regulate rates, *not arbitrarily, but intelligently*, and after due investigation.

Milwaukee Electric Railway & Light Co. v. *City of Milwaukee*, 87 Fed., 577.

Mercantile Trust Co. v. *Texas Pacific R. R. Co., et al.*, 51 Fed., 529.

New Memphis Gaslight Co. v. *City of Memphis*, 72 Fed., 952.

The Defense of the City Based on Estoppel.

The answer of defendant contains sundry averments that complainant had secured its franchise ordinance by making false representations to the City Council.

While the decree of the Court specifically excludes any consideration of this defense, it is now proper to advert to it in the consideration of the general merits of the case.

Upon the issue of estoppel the evidence shows—

First. That the alleged representations were not made by the complainant company.

Second. That such representations were not authorized by any corporate action of the complainant company.

Third. That all the representations in question were made prior to the time of the adoption of the franchise ordinance and became merged therein.

Fourth. That such representations, not being incorporated in the franchise ordinance, could not have been a controlling consideration in the passage of the same.

Upon this issue the master found (Rec., p. 49):

> "It does not appear, however, that any corporate action taken at any time by complainant authorized such statements or representations, nor does it appear that in any such statements or representations any fixed rate at which complainant would furnish gas to consumers was stated, the substance of them being that 'the price would be cheapened.'"

The Master's Finding of Law 23 (Rec., p. 61).

> "Under the facts as found, the estoppel set up by the defendant can not be sustained. If the rate fixed by the ordinance of September 4, 1900 had been prescribed in the original license to complainant, a question much more difficult to a correct decision in that regard would be presented."

The doctrine of estoppel can not be invoked in this case without doing violence to fundamental principles governing the binding force of corporate acts and destroying the elementary principles which uphold the binding force of written contracts.

Garlinghouse v. *Whitwell*, 51 Barbour, 208,
Hurt v. *Riffle*, 11 Fed. Rep., 790.
Union Mutual Life Ins. Co. v. *Slee*, 123 Ill., 57.
Chandler v. *White*, 84 Ill., 438.
Hill v. *Epley*, 31 Penn. State, 331.
Davidson v. *Young*, 38 Ill., 152.
Mason v. *Harper's Ferry Bridge Co.*, 28 W. Va., 649.
Lash v. *Rendell*, 72 Ind., 475.
Stoddard v. *Johnson*, 75 Ind., 20.
Plinner v. *Lord*, 9 Allen, 455.

So far as we have been able to find, no court has ever held that mere considerations of opinion could create an estoppel; nor have expressions made in good faith been held to create an estoppel where the party invoking the doctrine was in a position to secure information upon which to base an independent judgment, and where the party making the representations did not do so in the form of a guaranty.

It was entirely within the power of the City Council of the City of Peoria to have inserted maximum rates in the franchise ordinance in accordance with the alleged representations of individual stockholders. If it relied on the alleged representations and at that time placed upon them the same

construction for which it now contends, it is fair to presume that the City Council would have embodied the maximum rate in the ordinance. The franchise ordinance is a contract and merges all negotiations and represents the final conclusions of the parties thereto, and it is a fair presumption that when the franchise ordinance was passed in its existing form, both parties were content that the question of the rate to be charged either be left to the operation of natural laws, or if regulations were attempted that the rate fixed would be a reasonable one after due investigation and according to law.

This principle applied fundamentally to written contracts in general (*i. e.*, that their effect may not be varied by parol evidence, but that all negotiations are presumed to be merged in the contract itself), is applied also to *ordinance contracts.*

Curtiss v. *City of Waterloo*, 38 Iowa, 266.

Commissioners v. *Hunt*, 33 Ohio St., 169.

Bridges et al. v. *Board of Supervisors*, 56 Miss., 817.

Nor was it proper or legitimate for the court, over the specific objections of complainant, to inquire into the motives which induced the city council to pass the ordinance.

Farmers Loan & Trust Co. v. *C. P. & S. Ry. Co.*, 39 Fed., 143, 153–156.

That a corporation can not be estopped by the unauthorized representations of the stockholders is apparent from the following cases:

American Preservers Co. v. *Norris*, 43 Fed., 711.

Davis Wagon Wheel Co. v. *Davis Wrought Iron Wheel Co.*, 20 Fed., 700.

Moore & Handley Hardware Co. v. *Towers Hardware Co.* (Ala.), 6 So., 41–43.

Bartlett v. *Kinsley*, 15 Conn., 327.

Jones v. *Williams* (Mo.), 39 S. W., 489.

Moreover, if this question of estoppel should be deemed material to a decision of the case, the record discloses that the representations upon which the estoppel is based were not false or fraudulent, but were carried out in good faith.

(Record pp. 781, 819, 820, 872, 887, 918, 992, 998, 1041, 1055, 1070, 1090, 1091.)

THE COMMISSIONER'S CONCLUSIONS OF LAW.

The principal conclusions of law of the special commissioner (not already discussed) and the authorities in support of the same now follow:

1. The commissioner states the main question before him as follows: (Second conclusion of law, Rec., p. 57.)

> "In this case the following federal question is presented,—does the ordinance adopted by the defendant on September 4, 1900, in and by which the maximum price to be charged for gas in the City of Peoria is fixed, violate the provisions of the Constition of the United States wherein it provides that no person shall be deprived of his property without due process of law, and further, that private property shall not be taken for public use without just compensation?"

2. The commissioner's answer to this question is found in the sixth conclusion of law (Rec., p. 58), and the eighteenth conclusion of law (Rec., p. 60).

> "6. The fact being established that complainant can not manufacture and distribute gas to the citizens of Peoria at the maximum rate fixed by the ordinance, it then follows that:
>
> a. The ordinance is void because by it the city has gone beyond the powers conferred by the laws of the State of Illinois which confer upon it the power to regulate the price to be charged for gas. It constitutes the exercise of a lawful right in an unreasonable manner; and
>
> b. The enforcement of the ordinance requiring complainant to furnish gas to the citizens of Peoria at the point of consumption at the maximum price therein fixed would constitute the taking of private property for public use without just compensation, and in that respect is in violation of the provisions of the Constitution of the United States.
>
> "18. *The evidence in this regard shows that the maximum rate fixed by the above ordinance is so unreasonably low as to require the complainant to furnish gas to the citizens of Peoria at a price below the cost of manufacturing and distributing it. The enforcement of it would constitute the taking of the property for public use without just compensation. This is prohibited by the fourteenth* (14) *amendment to the Federal Constitution.*"

These conclusions of the commissioner find ample support in the following cases, in many of which it is submitted the evidence was far less conclusive of the threatened injury to complainant's property and property rights than in the case at bar.

Indianapolis Gas Co. v. *City of Indianapolis*, 82 Fed., 245.

Citizens Street Railway v. *City Railway Co.*, 56 Fed., 746.

Same case affirmed in Supreme Court, 166 U. S., 557.

Walla Walla v. *Walla Walla Water Co.*, 172 U. S., 1.

Mercantile Trust & Deposit Co. v. *Collins Park and Belt R. R. Co.*, 99 Fed., 812.

Southwestern Missouri Light Co. v. *City of Joplin*, 101 Fed. 23.

C. M. & St. P. Ry. v. *Minnesota*, 134 U. S., 460.

Haverhill Gas Light Co. v. *Barker*, 109 Fed., 694.

Cleveland Gas Light & Coke Co. v. *The City of Cleveland*, 71 Fed. Rep., 610.

3. That the question of the reasonableness of such ordinance and as to whether the limitations are reasonable or unreasonable as between the public and a public service corporation, are ultimately questions for judicial, not legislative determination. (Master's finding 15, Rec., pp. 59–60.)

Stone v. *Trust Co.*, 116 U. S., 307.

C. & N. W. Ry. Co. v. *Dey*, 35 Fed., 866.

Clyde et al. v, *R. & D. Ry. Co.*, 57 Fed., 436.

The Findings of the Special Commissioner Appointed by Agreement of the Parties are Entitled to Peculiar Weight.

The Special Commissioner in this case was appointed under stipulation and by consent of both parties. Such a consent, entered as an order of Court, is "a submission of the controversy to a tribunal of the parties' own selection, to be governed in its conduct by the ordinary rules applicable to the administration of justice in tribunals established by law. Its findings, like those of an independent tribunal, are to be taken as presumptively correct, subject indeed, to be reviewed under the reservation contained in the consent and order of the Court, when there has been manifest error in the consideration given to the evidence or in the application of the law, but not otherwise."

Kimberly v. *Arms*, 129 U. S., 512, 523–525,

Farrer v. *Bernham*, (Cir. Ct. of App. 5th Cir.) 75 Fed. 136.

Trustees Dartmouth College v. *International Paper Co.*, 132 Fed., 91.

Davies v. *Schwartz*, 155 U. S., 631.

Third Nat. Bank v. *Nat. Bank.* (C. C. A., 5th Circ.), 86 Fed Rep., 852.

The Elton. (C. C. A., 4th Circ.), 83 Fed. Rep., 519.

Walker v. *Kinnare.* (C. C. A., 7th Circ.), 76 Fed. Rep., 101.

Moline Plow Co. v. *Carson.* (C. C. A., 8th Circ.), 72 Fed. Rep., 387.

Phœnix Furniture Co. v. *Put-in-Bay Hotel Co.* (C. C. for N. D. of Ohio), 66 Fed. Rep., 683.

The order of court, submitting this case to the special master, for his determination, was as follows:

> "Now come the parties, by their solicitors, and by agreement, in open court, it is hereby ordered that I. C. Pinckney, of the City of Peoria, in said district and division, be and he is hereby appointed a special commissioner to take the proofs herein and report the same, with his findings and conclusions herein, with all convenient speed." (Rec., p. 38.)

In *Kimberly* v. *Arms, supra*, the court says:

> "When the parties consent to a reference of a case to a master or other officer, to hear and decide all the issues therein and report his findings, both of fact and of law, and such reference is entered as a rule of the court, the master is clothed with very different powers from those which he exercises upon ordinary references, without such consent, and his determinations are not subject to be set aside and disregarded at the mere discretion of the court: A reference, by consent of parties, of an entire case, for the determination of all its issues, though not strictly a submission of the controversy to arbitration (a proceeding which is governed by special rules), is a submission of the controversy to a tribunal of the parties' own selection, to be governed in its conduct by the ordinary rules applicable to the administration of justice in tribunals established by law.
>
> 'To disregard the findings and treat the report as, a mere presentation of the testimony is to defeat, as we conceive, the purpose of the reference and disregard the express stipulation of the parties. We are, therefore, constrained to hold that the learned court below failed to give to the findings of the

master the weight to which they were entitled, and that they should have been treated as so far correct and binding as not to be disturbed, unless clearly in conflict with the weight of evidence upon which they were made."

In *Davies* v. *Schwartz*, *supra*, the Court says:

"While it was held that the court could not, of its motion, or upon the request of one party, abdicate its duty to determine by its own judgment the controversy presented, and devolve that duty upon any of its officers, yet where the parties select and agree upon a special tribunal for the settlement of their controversy, there is no reason why the decision of such tribunal, with respect to the facts, should be treated as of less weight than that of the court itself, where the parties expressly waive a jury, or the law declares that the appellate court shall act upon the finding of a subordinate court."

CONCLUSION.

We can not impress upon the court too strongly the position in which the complainant will be most unfairly and unjustly placed in the event of an affirmance of the decree below without any decision as to the validity of the maximum rate ordinance. The circuit court compelled complainant as a condition precedent to appeal to file a bond for $150,000 conditioned "that if the said complainant shall not prosecute its appeal with effect and make its plea good, then the said complainant shall well and truly pay and refund to the said City of Peoria for the use of such of the inhabitants thereof as are con-

sumers of gas furnished by the said Peoria Gas and Electric Company, complainant, all excess, over seventy-five cents per thousand cubic feet charged and collected by said complainant from such consumers and all damages that may accrue to said city and said consumers of gas by reason of the restraining order heretofore entered and continued in said cause by reason of the appeal herein." (Rec., p. 143.)

If the complainant is to be denied equitable relief, it will follow that the city can claim the forfeit of the bond, notwithstanding the fact that the special commissioner appointed by agreement of the parties has declared the ordinance unreasonable, unconstitutional and wholly void.

Nor in such event can this complainant ever find a *locus poenitentiæ*, for this record shows that every act upon which the Court below based its finding of combination had ceased to exist at the time of the closing of the evidence in the case, it appearing (Record, pages 1353 and 1717) that even the alleged agreement as to rates did not continue for more than four months after the filing of the bill. The complainant can not, therefore, further purge itseif of its alleged offenses.

Moreover, by reason of the nature of its business, it can not remove its stock in trade to a more friendly locality, and, being a public-service corporation, it will not be permitted voluntarily to go out of business—this very ordinance requires it to exercise its franchise at the bidding of the public, and prescribes exorbitant penalties for each and every refusal on its part to furnish gas at the prescribed rate upon request.

An affirmance of the decree, therefore, would mean that this corporation, unable further to purge itself of the criticism of the Court below, handicapped by the utter impracticability of removing its property, denied the right of going out of business, and beset by conditions which the special commissioner declared meant financial ruin, must continue to operate its plant until such time as its property, valued at $500,000, has been dissipated or its affairs wound up through the merciful intervention of a receiver in bankruptcy.

For the foregoing reasons, it is submitted that the decree of the court below should be reversed, and that this court should enter a decree in accordance with the special commissioner's report or should remand the case, with instructions to the court below to enter such a decree.

E. C. RITSHER,
W. T. IRWIN,
W. T. ABBOTT,
Of Counsel for Appellant.

FILE COPY.

Office Supreme Court U. S.
FILED
NOV 6 1905
JAMES H. McKENNEY,
Clerk.

(19367)

Supreme Court of the United States.

OCTOBER TERM, A. D. 1905.

No. 33.

PEORIA GAS AND ELECTRIC COMPANY,
Appellant,

vs.

THE CITY OF PEORIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Suggestions by Complainant in Regard to Petition of City of Chicago for Leave to File Brief.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Referring to the petition of the City of Chicago for leave to file a brief in this cause, it is suggested that—

1. The question argued in petitioner's brief is admittedly unnecessary to a decision of the case now be-

fore the Court. The fear that this Court in its opinion herein may commit itself upon a question involved in another suit is, therefore, groundless.

2. The question which petitioner presents appears to be vital to a proper decision of the case of Darius O. Mills *vs.* City of Chicago *et al.* It, therefore, can best be considered in the orderly hearing of that case.

3. The suit of Darius O. Mills *vs.* City of Chicago *et al.* is not pending in this Court, and there is no certainty that said suit will ever be docketed in this Court.

Respectfully submitted,

E. C. RITSHER,
W. T. IRWIN,
W. T. ABBOTT,
Of Counsel for Complainant.

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 30 1905
JAMES H. McKENNEY,
Clerk.

(19367)

Supreme Court of the United States.

OCTOBER TERM, A. D. 1905.

No. 33.

PEORIA GAS AND ELECTRIC COMPANY,
Appellant,

vs.

THE CITY OF PEORIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Suggestions by Complainant in Regard to Petition of Darius O. Mills for Leave to File Brief.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

It would be presumptuous for complainant to object to the filing of a brief by one who comes as *amicus curiæ*. It may pertinently be observed, however, that

1. The question sought to be raised by petitioner's brief is admittedly unnecessary to a decision of the case

before the Court. The argument of the question, therefore, will not aid the Court in determining the issues in this case. Hence, "petitioner is apprehensive" that the authorities in support thereof "may not otherwise (than by petitioner's brief) be called to the attention of the Court."

2. The suit of Darius O. Mills *vs.* The City of Chicago *et al.*, is not pending in this Court, and as it appears that the question of appeal lies not with Darius O. Mills but with the City of Chicago, petitioner is unable to assure the Court that said suit will ever be docketed in this Court.

3. The manifest fear of Mr. Mills that this Court may commit itself upon a question involved in another suit is groundless. Should this Court indulge in an *obiter dictum* in the opinion filed in this case, the Court has no such pride of opinion as to be bound thereby should the question in which petitioner is interested come before it in due course.

Respectfully submitted,

E. C. RITSHER,
W. T. IRWIN,
W. T. ABBOTT,
Of Counsel for Complainant.

United States Supreme Court

OCTOBER TERM, 1905.

No. 269.

PEORIA GAS AND ELECTRIC COMPANY,
Appellant,

vs.

CITY OF PEORIA,
Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION.

STATEMENT.

This case arises on a bill filed by appellant to restrain appellee from enforcing an ordinance fixing a maximum rate of 75 cents per thousand cubic feet to be charged the consumers of gas within the City of Peoria and also prescribing a penalty for each violation of the ordinance.

Prior to 1899, for a period of nearly fifty years, the Peoria Gas Light and Coke Company, organized under a special charter, had manufactured and furnished gas to the City of Peoria and its citizens.

Mathew Henebery became connected with this old company some time about 1875. (Rec. p. 1218.) At that

time it was $60,000.00 in debt. The management which then took hold made a highly prosperous company of it.

Out of the receipts this debt was soon paid. Additional real estate was bought at $6,000.00 or $7,000.00. A water gas plant was installed at $80,000.00. A retort house and other betterments were built at an expense of $60,000.00. The company also purchased $55,000.00 of the $100,000.00 of the shares of the capital stock of the General Electric Company, which at that time furnished the electric lights, public and private, of the city. They also loaned $50,000.00 of their surplus and, in addition to all this, paid annual dividends of ten per cent. and, in addition thereto, annual salaries to the officers of $5,000.00, $3,000.00 and $1,000.00.

When Henebery quit, in April, 1900, this old company had a surplus of $80,000.00, and he sold his stock, which was $50.00 per share on its face, at $218.35 per share.

This company, when he first became connected with it, was selling gas at $3.50 per thousand cubic feet. This was reduced in a short time to $2.50. This rate prevailed for a short time and then it was reduced to $2.00 and then it was reduced to $1.25 net for light and 75 cents net for fuel gas. This had been in force some time when Henebery sold out. These reductions were all voluntary.

There was still another reduction by this company to $1.00 for light and 75 cents for fuel about the time the new company obtained its charter, in the spring of 1899.

At that time the consumption of gas for fuel and light

was about equal, making the average price at which the old company was manufacturing and selling gas 87½ cents per thousand cubic feet. (Rec. p. 1218, *et seq.*)

So enormous had been the profits of this old company that the citizens of Peoria were ready to encourage the organization of a new company.

Theodore J. Miller and Sumner R. Clarke, of the City of Peoria, and John R. Walsh, of the City of Chicago, recognizing the situation as a favorable one to obtain an advantageous concession from the City of Peoria, took steps to promote the organization of a new company.

John R. Walsh's connection with the enterprise was carefully concealed by the local promoters and several local capitalists and business men were induced to become subscribers to the stock by representations on the part of the local promoters that it was to be a competitive company with the old, and that it was to be a Peoria enterprise and would result in furnishing gas to Peoria citizens at very much reduced rates.

The stock was, in fact, all subscribed for by Peoria parties, Sumner R. Clarke subscribing for much the largest amount thereof. Application was then made to the City Council for an ordinance permitting the new company, which was first incorporated as the Peoples Gas and Electric Company, to erect a plant and occupy streets and alleys for the purpose of laying mains thereon.

To obtain the passage of this ordinance, the promoters and stockholders of the new company interviewed the

aldermen and represented to them that it was a Peoria company and a Peoria enterprise and that granting it the license asked would result in furnishing gas at a much lower rate than the old company were demanding, and in some instances saying that it could and would be furnished at 75 cents per thousand; and in other instances, as confirmatory of the above statement, repeating that the officers of the old company had declared they would put the price of gas down to 50 cents if the new company attempted to go ahead with its enterprise.

Persuaded and induced by these statements, an ordinance was passed in April, 1899, by the City Council of Peoria, permitting the Peoples Gas and Electric Company to construct and operate and maintain gas works in the City of Peoria and lay mains on streets and alleys for distribution, etc.

It was understood, as Mr. Clarke says, that Peoria parties would take one-third of the stock and Mr. Walsh the rest. This, however, was known only to Mr. Clarke and Mr. Miller.

But one assessment (twenty per cent.) was made on the $500,000.00 of the capital stock and no more was ever paid in by the subscribers. This assessment was afterwards repaid to the Peoria subscribers with interest. (Rec. pp. 1407, 1408, 1459.)

In pursuance of this same covert plan of the organization, as conceived by the promoters, Miller, Clarke and Walsh, soon after the passage of the ordinance giving the right to commence operations, Clarke, on January 2d, 1900,

assigned a large block of the stock to Walsh—3,040 shares, and another block of 750 shares to Little. (Rec. p. 1608.)

To make things doubly sure, all the local directors were asked to resign, and confidants of Walsh elected in their places. To assure the continuance of Walsh's exclusive control of the gas business, Mr. Little says it was understood when he, Little, became interested in the company that all the stock should be held as a unit and a continuity of the management be preserved during a period of years. (Rec. p. 1405.) In pursuance of this understanding, nearly all the stock of the company was placed in the hands of Sumner R. Clarke and John R. Walsh as trustees and to be held by them and voted by them as per a certain agreement likewise signed by the stockholders and held by the Equitable Trust Company of Chicago, but which the Master refused to permit defendants to inspect or put in evidence. (Rec. p. 1563.)

Mr. John R. Walsh through these agencies and by these methods had thus become master of a most favorable contract and privilege from the City.

In May, 1900, the new company increased its capital stock to the sum of one million dollars. The original stock being for $500,000.00, this increase amounted to $500,000.00. (Rec. p. 1611.)

The stockholders and directors regarded the rights and privileges which they had obtained under the ordinance from the City of such value that they, by resolution of record, declared the assets of the company of value equal to the increased amount of this capital stock, and directed

that it all be issued as paid-up stock to the then stockholders in proportion to their then holdings. (Rec. p. 1613.)

The new company's name was changed to the Peoria Gas and Electric Company. Its capital stock was increased to two millions. It erected a large and commodious plant for a city the size of Peoria, laid its mains and service pipes, and with about two thousand customers commenced operations about March 11th, 1900. The price from March 11th to March 21, 1900, was 90 cents net for light and 65 cents net for fuel gas.

The old company had lowered its rate and the new company met the cut in price by a 30-cent rate for both light and fuel.

The former owners of the old company had now sold out their holdings and a new lot of men were in control of that company. (Rec. p. 1224.)

W. B. McKinley, of Champaign, Illinois, a general operator in gas plants, became the president and practically the manager and director of the policy of the old company. There soon arose a friendly and intimate relation between these two competing companies.

Mr. Eustace, the superintendent of manufacture of the new company, was permitted to take that place for the old company, and their superintendent of distribution, Robb, for the time being became their superintendent of manufacture. (Rec. p. 1183.)

Eustace, while superintendent of the old company's

manufacture, maintained a confidential relation towards Little, the general manager of the new company.

The two companies soon arrived at the point where they wished and sought means to suppress the competition they were in, that they might raise and maintain a higher price to consumers.

They held a conference in Chicago for this very purpose. (Rec. p. 1350.) Mr. W. B. McKinley, the president of the old company, was there. Mr. Walsh was there. Mr. Little says when he came in, the statement was made that *the time had come to stop carrying on an unprofitable business, and the question arose as to what was fair and equitable rates, and the discussion was entirely on these lines.* He says Mr. McKinley had had experience and been identified with a number of gas plants for several years, but he didn't remember who suggested the rate, whether himself or Mr. McKinley. The general talk was on the advisability of making those rates, but he didn't remember who *made the suggestion of rates that were adopted.*

The rate adopted was $1.15 net for light and 75 cents net for fuel gas. (Rec. p. 1353.)

Immediately following this conference and the adoption of this rate, there appeared in the Peoria papers, at the same time, in exactly the same language, notices from each of the companies to the public of the adoption of this rate, to take effect on July 31st, 1900. (Rec. p. 1351, Rec. p. 26.)

Mr. Little says he caused the notice to be published

for the new company, but didn't know who did it for the old company, but further says he knew that the old company made the same rate at the same time; that he knew before he made this advance that the old company intended to do likewise.

In furtherance of this combination between these two competing companies to suppress that competition and raise the price of gas to the consumer a few months thereafter they, the two companies entered into a written agreement (Rec. pp. 1357-1468) by which the old company shut down its manufacturing plant and the new company connected up a service pipe with the old company's mains and furnished the old company gas at 75 cents per thousand. The old company, by its own employees, attended to the collection from its own customers and conducted its business as before except the manufacturing.

The new company made the repairs of mains, service pipes, etc., for the old company and charged them therefor.

By this arrangement, the old company no longer had it in its power to compete by reducing the price of gas to 75 cents. This arrangement was to continue for a period of ten years with the privilege of cancelling it on six months' notice by the old company any time within the first two years.

When the two companies united in raising and fixing the price of gas to $1.15 net for light and 75 cents net for fuel gas, the City took action to control the rate and in September, 1900, adopted an ordinance providing that the maximum price for gas furnished the citizens of Peoria and

all consumers of gas in said city should not exceed the sum of 75 cents per thousand cubic feet and that the gas so furnished should not be less than 18 candle power, to be measured at the place of consumption, etc., and that the Peoria Gas Light and Coke Company and the Peoria Gas and Electric Company or any other company, corporation or person who were then or might thereafter furnish gas to consumers in the City of Peoria were authorized and empowered to charge all consumers of gas in said city a sum not in excess of 75 cents per thousand cubic feet. This ordinance also provided a penalty of not less than $25.00 nor more than $200.00 for each violation thereof. (Rec. p. 17.)

After the adoption of the foregoing ordinance by the City, the complainant on the 18th of September, 1900, filed its bill in the United States Circuit Court charging that the City had no power or authority to enact the ordinance and charging and averring that the rate fixed by the City was unreasonable and that the ordinance was unreasonable and void, and prayed for and obtained an injunction against the City of Peoria and its officers from enforcing such ordinance during the pendency of the suit.

This bill the defendant answered averring and setting out certain false and fraudulent representations made by the promoters and stockholders of the complainant to the City Council of the defendant for the purpose of obtaining the passage of the ordinance, granting it the privilege of manufacturing and distributing gas in the City and averring that the promoters and stockholders of the complainant had, to obtain the passage of such ordinance, represented

that they would compete with the old company in the manufacture and sale of gas and could and would furnish it at 75 cents per thousand cubic feet and that they were, therefore, estopped to deny that such rate was reasonable.

The defendant also answered averring that it had authority to pass the ordinance fixing the rate and that the rate was reasonable and denying that the ordinance was unreasonable or void.

The defendant further answered that the question as to whether the State had delegated to the City its power and authority to regulate rates was not a federal one and that the complainants were estopped to assert a want of authority in the city to regulate the rate of charges to a consumer.

The defendant also answering alleged that prior to the enactment of the ordinance fixing the rate, that the complainant had entered into a combination, agreement or arrangement with the Peoria Gas Light and Coke Company to regulate or fix the price of gas to be sold to the citizens of the City of Peoria and that in pursuance thereof the two companies had at one and the same time published notices in the newspapers of the City of Peoria in words and figures identical, of an advance in the price of gas, and that an agreement or understanding exists between said corporations that they will not compete in price for the sale of gas and that the price therefor shall be determined mutually between them, by which arrangement and agreement all competition and reduction of prices was precluded, and that said ordinance fixing the maximum rate of charge was adopted in good faith to protect the said City and its

inhabitants from the oppression and illegal combination of complainant and the Peoria Gas Light and Coke Company.

A general replication was filed to this answer and a preliminary injunction issued restraining the City from the enforcement of the ordinance during the pendency of the cause.

On the 20th of May, 1901, the cause was referred to Mr. I. C. Pinkney, as a Special Commissioner, to take the proofs in the cause and report the same with his findings and conclusions therein with all convenient speed.

The Special Commissioner took the proofs of the respective parties and reported the same together with his conclusions both of law and fact. He found in brief that while the stockholders made representations as to the reduction of the price of gas upon which the complainant company procured the adoption of its ordinance, yet that the corporation complainant had not authorized the making of any such statements and therefore was not prejudiced by them. He found likewise that the City had authority under its police power to pass an ordinance regulating the price of gas, but he also found with much detail as to the evidentiary matter that the rate fixed by the ordinance of September, 1900, was less than the complainant company could afford to manufacture and distribute gas for and that the ordinance was therefore unreasonable and void. He wholly omitted and neglected to find anything in regard to the alleged unlawful combination between the two old companies, alleged to have been entered into in July, 1900, in violation of the Anti-Trust Act of Illinois, enacted in 1891.

Exceptions were taken and filed by both parties to the report of the Master, covering in minute detail every fact alluded to or mentioned by the Master. The case was heard before the Circuit Court on the report of the Master and the exceptions thereto.

Judge Humphrey, in deciding the case, February 8th, 1904, delivered the following opinion:

"This matter comes up on exceptions to the Master's "report. I believe both complainant and defendant have "filed exceptions to certain affirmative holdings of the "Master, and both parties have also filed exceptions because "the Master failed to hold—omitted to hold—upon certain "other questions. Without undertaking to remember or "specify the facts about this long list of exceptions, this "record shows that complainants' bill was filed on Septem-"ber 18, 1900, seeking to enjoin the enforcement of an "ordinance of the City of Peoria fixing the maximum rate "for gas, which ordinance had been passed on the 4th day "of the same month—September, 1900.

"The bill avers that the City Council had no power to "pass the ordinance, that the rate as fixed by the ordinance "is unreasonably low, that its enforcement would deprive "the complainant of its property without due process of "law, and would deny to complainant the equal protection "of the laws, thus raising a Federal question on the four-"teenth amendment to the Constitution of the United "States. The answer of the City avers that the complain-"ant has entered into an illegal combination or understand-"ing with the old gas company; second, that whether that

"be so or not, the complainant is estopped to deny the "validity of this ordinance or the reasonableness of this "rate by certain acts of its own at the time this franchise "ordinance was passed; third, that the City Council had "power to pass the ordinance in question; and fourth, that "the rate fixed was a reasonable one.

"I am of the opinion that the averment of the answer "which I have first mentioned has been so fully proven by "this record that it must be conclusive of the case. The "Illinois Anti-Trust Law, as construed by the Supreme "Court of Illinois, leaves no doubt in my mind that this "record shows, on the part of this complainant, a violation "of that act in the manipulation of the stock of both com-"panies, the use of the mains of both companies, the per-"forming by complainant's servants of the business of both "companies, the simultaneous agreement of rates between "the officers of both companies on the contract in evidence "between the two companies—all lead to the inevitable "conclusion that there was an understanding between com-"plainant and the old company such as the Illinois act "prohibits. A Court of equity will not assist complainant "to reap the fruits of such unlawful combination. The "exceptions on the part of the City to that part of the "Master's report which omits to find in accordance with "this view, will be sustained, and I need not enlarge upon "the other numerous questions raised by this record. The "bill will be dismissed at complainant's costs. Counsel for "the City may prepare the order." (Rec. p. 139.)

In accordance with the views expressed by the Court, a decree was entered reciting that the cause having come

on for a hearing on the bill of complaint, the answer of the defendant, the replication thereto, and the report of the Master therein and the exceptions thereto and the evidence reported by said Special Master, and the Court having heard the arguments of Counsel, and being fully advised in the premises, finds from the evidence taken and reported in said cause, that the complainant unlawfully entered into a combination, agreement or understanding with the Peoria Gas Light and Coke Company (another corporation organized and doing business under the laws of the State of Illinois, and engaged in the business of furnishing gas to the citizens of the defendant, the City of Peoria, in competition with the said complainant) to regulate or fix the price at which gas should be furnished the people and citizens of the defendant, the City of Peoria, by the complainant and the said Peoria Gas Light and Coke Company contrary to and in violation of the Statute of the State of Illinois, approved June 11th, 1891, and in force July 1st, 1891, and that the complainant is, therefore, without equity, and that the injunction theretofore issued in the cause should be dissolved.

It was therefore ordered, adjudged and decreed by the Court that the injunction theretofore issued in this cause be and the same was thereby dissolved and that the complainant's bill of complaint be and the same was thereby dismissed for want of equity and that complainant pay the costs of the suit to be taxed, etc. (Rec. 141-143.)

From this decree an appeal has been taken and this cause brought to this Court.

Our contention is that the Court below was right in

his opinion and decree finding that the complainant had entered into an unlawful combination with the Peoria Gas Light and Coke Company to regulate or fix the price of gas and that the bill was filed against the City of Peoria in aid of this unlawful combination and to enable it to reap the fruits of its unlawful conduct; that a court of equity will not extend its aid to accomplish such an end and that the bill was therefore properly dismissed for want of equity; that the City had the power and authority to pass the ordinance fixing the rate to be charged, subject only to the condition that such rate must be reasonable; that the Court below not having passed on this question but having disposed of the case on another question, this Court is not called upon to determine whether the rate fixed is reasonable or not, because if the finding of the Court below is affirmed it is unnecessary to determine whether the rate was reasonable or not and if this Court should reverse the Court below, it would not examine the voluminous testimony on the question of the rate being reasonable until it had been first examined and passed upon by the trial Court. And, further, that in the event this Court should examine the record as to this question, that the evidence is sufficient to show that the rate fixed is a reasonable one.

BRIEF.

I.

The Unlawful Combination.

The opinion of the trial Court and the decree herein disclose the fact that this case was determined solely upon the finding that the evidence showed that complainant and the Peoria Gas Light and Coke Company had entered into a combination or understanding to regulate and fix the price of gas to consumers in the City of Peoria in violation of the Anti-Trust Act of Illinois, passed in 1891.

This Act is as follows:

"AN ACT to provide for the punishment of persons, "co-partnerships or corporations forming pools, trusts and "combines, and mode of procedure and rules of evidence in "such cases. (Approved June 11th, 1891. In force July "1st, 1891, p. 206.)

"Pools, Trusts and Combines described. Sec. 1. Be "it enacted by the People of the State of Illinois, repre- "sented in the General Assembly, If any corporation organ- "ized under the laws of this or any other State or country, "for transacting or conducting any kind of business in this "State, or any partnership or individual or other associa- "tion of persons whosoever, shall create, enter into, become "a member of or a party to any pool, trust, agreement, "combination, confederation or understanding with any

"other corporation, partnership, individual, or any other "person, or association of persons, to regulate or fix the "price of any article of merchandise or commodity, or shall "enter into, become a member of or a party to any pool, "agreement, contract, combination or confederation to fix or "limit the amount or quantity of any article, commodity or "merchandise to be manufactured, mined, produced or sold "in this State, such corporation, partnership or individual "or other association of persons shall be deemed and "adjudged guilty of a conspiracy to defraud, and be subject "to indictment and punishment as provided in this Act.

"2. Organization or combination and issue of trust "certificates prohibited. Art. 2. It shall not be lawful for "any corporation to issue or to own trust certificates, or for "any corporation, agent, officer or employes, or the directors "or stockholders of any corporation to enter into any com- "bination, contract or agreement with any person or per- "sons, corporation or corporations, or with any stockholder "or director thereof, the purpose and effect of which com- "bination, contract or agreement shall be to place the man- "agement or control of such combination or combinations, "or the manufactured product thereof, in the hands of any "trustee or trustees, with the intent to limit or fix the price "or lessen the production and sale of any article of com- "merce, use or consumption, or to prevent, restrict or "diminish the manufacture or output of any such article.

"3. Violations of Act—Penalty. Art. 3. If a cor- "poration or a company, firm or association shall be found "guilty of a violation of this Act, it shall be punished by a "fine in any sum not less than five hundred dollars ($500)

"nor more than two thousand dollars ($2,000) for the first "offense, and for the second offense not less than two "thousand dollars ($2,000) nor more than five thousand "dollars ($5,000), and for the third offense not less than "five thousand dollars ($5,000) nor more than ten thous-"and dollars ($10,000), and for every subsequent offense "and conviction thereof, shall be liable to a fine of fifteen "thousand dollars ($15,000); provided, that in all cases "under this Act either party shall have the right of trial by "jury.

"4. Officer, agent or receiver of corporation, indi-"vidual, etc., violating act. Art. 4. Any president, man-"ager, director or other officer or agent or receiver of any "corporation, company, firm or association, or any member "of any company, firm or association, or any individual "found guilty of a violation of the first section of this Act, "may be punished by a fine of not less than two hundred "dollars ($200), nor to exceed one thousand dollars "($1,000), or be punished by confinement in the county "jail not to exceed one year, or both, in the discretion of "the Court before which such conviction may be had.

"5. Contracts, etc., violative of Act, void. Art. 5. "Any contract or agreement in violation of any provision "of the preceding sections of this Act shall be absolutely "void.

"6. Purchasers of product or manufacture violating "Act discharged from payment. Art. 6. Any purchaser "of any article or commodity from any individual, company "or corporation transacting business contrary to any pro-

"vision of the preceding sections of this Act shall not be "liable for the price or payment of such article or com- "modity, and may plead this Act as a defense to any suit "for such price or payment.

"7. Fines, recovery. Art. 7. The fines hereinbefore "provided for may be recovered in an action of debt, in the "name of the people of the State of Illinois. If, upon the "trial of any cause instituted under this Act to recover the "penalties as provided for in Section 3, the jury shall find "for the people, and that the defendant has been before "convicted of a violation of the provisions of this Act, they "shall return such finding with their verdict, stating the "number of times they find defendant so convicted, and "shall assess and return with their verdict the amount of "the fine to be imposed upon the defendant in accordance "with said Section 3; provided, that in all cases under the "provisions of this Act, a preponderance of evidence in "favor of the people shall be sufficient to authorize a verdict "and judgment for the people."

The foregoing Act is not to be confused with the Act of 1893, which by reason of provisions therein contained was held by this Court in *Connolly* vs. *Union Sewer Pipe Co.*, 184 U. S., 540, to constitute class legislation and to render the Act void.

Nor can the Act of 1891 above set out be said to be affected by the Act of 1893, because the Act of 1893 did not contain any provision expressly repealing the Act of 1891; and the Act of 1893 being void cannot be said to repeal the Act of 1891 by implication.

An amendment to the Act of 1891 was passed in 1897, the provisions of which were open to the same objection as the Act of 1893, namely, that it constituted class legislation. This amendment of 1897 is like the Act of 1893 void and can have no effect upon the original Act of 1891.

The Supreme Court of Illinois has lately passed upon these questions as follows:

"It is urged that the Act of 1891 is rendered uncon-"stitutional by the amendment of 1897, and it is also said "that the Act of 1891 was repealed by an Act entitled "An "Act to define trusts and conspiracies against trade, declar-"ing contracts in violation of the provisions of this Act "void, and making certain acts in violation thereof misde-"meanors, and prescribing the punishment therefor and "matters connected therewith"; approved June 20, 1893. "(Laws of 1893, p. 182.) "The questions here raised are "somewhat akin to each other and will be considered to-"gether.

"The Act of 1893 did not expressly repeal the Act of "1891, and from a comparison of the provisions of the acts "we are of the opinion that there is no such repugnancy "existing between the two that the latter would effect a re-"peal, by implication, of the former. Furthermore, the "Legislature evidently did not intend to repeal the Act of "1891 by the Act of 1893, as upon the day upon which the "latter Act was passed the former was amended, and the "Act of 1891 was again amended in 1897. In the case of "*Connolly* vs. *Union Sewer Pipe Co.*, *supra*, the Supreme "Court of the United States had before it for consideration "the Act of 1893, and it was there held that the entire Act

"was unconstitutional and void, as being in conflict with "the provisions of the fourteenth amendment of the Con- "stitution of the United States, in this: that it improperly "discriminated in favor of agricultural products or live "stock in the hands of the producer or raiser. If the Act "of 1893 is void as being in conflict with the Federal Con- "stitution, as it, in view of the decision in *Connolly* vs. "*Union Sewer Pipe Co., supra*, must be held to be, it seems "too plain for argument that it could not have worked the "repeal of the Act of 1891. *Raymond* vs. *Hartford Fire* "*Insurance Co.*, 196 Ill., 329-344.

"The amendment of 1897 to the Act of 1891 was in "the form of a proviso to Section 1 of that Act and reads "as follows: "Provided, however, that in the mining, "manufacture or production of articles of merchandise, the "cost of which is mainly made up of wages, it shall not be "unlawful for persons, firms or corporations doing business "in this State to enter into joint arrangements of any sort, "the principal object or effect of which is to maintain or "increase wages." Under the decision in the Connolly case "it is clear that this amendment is unconstitutional and "void, as being an unlawful discrimination in favor of the "persons sought to be exempted by the amendment from "the operation of the Act of 1891, as amended by the Act "of 1893. If the amendment of 1897 sought to be incor- "porated into said statute is void, it necessarily would make "no change in the original Act, and that Act would stand, "as amended by the Act of 1893, as the legislative will. "The discrimination contained in the Act of 1893, and that "sought to be incorporated into the Act of 1891, as amended "in 1893, by the amendment of 1897, are of the same

"character, and both are obnoxious to the fourteenth "amendment to the Constitution of the United States. The "obnoxious provision in the Act of 1893 carried down with "it the entire Act, as the Court held the obnoxious pro- "vision was so intimately connected with the subject matter "of the Act that it could not be separated from the body of "the Act without destroying the entire Act. Such conse- "quence, however, does not follow the failure of the amend- "ment of 1897. The Act of 1891, as amended by the Act "of 1893, was a valid statute. That Act, as amended, and "the Act of 1897, are separate and distinct acts, passed by "different legislatures, and the subsequent unconstitutional "Act, which is without force, can have no effect to over- "throw and render void the legal and constitutional ex- "pression of the legislature as manifested by the Act of "1891, as amended in 1893.

"It is suggested the constitutional method of passing "amendments in this State, which requires "the section "amended shall be inserted at length in the new Act," "requires a holding to the effect that the section sought to "be amended is necessarily repealed, even though the sub- "ject matter sought to be incorporated into the section fails "by reason of the fact that the amendment is unconstitu- "tional and void. We cannot agree with this view. The "amendment of 1897 does not, in terms, repeal Section 1 "of the statute of 1891. If any part of the Act of 1891 is "repealed it must be a repeal by implication and because "the amendment is in conflict with the original Act or a "part thereof. But the amendment is unconstitutional and "void. It therefore repealed no part of the Act upon which "it was fruitlessly sought to be engrafted as an amendment.

"(*Ex parte Davis*, 21 Fed. Rep., 396.) Repeals by impli-"cation are not favored (*People* vs. *Nelson*, 156 Ill., 364), "and in *Childs* vs. *Shower*, 18 Iowa, 261, it is said (p. "272): If the repealing clause was positive and uncondi-"tional and under circumstances which indicated a design "to repeal the old law at all events, it would doubtless be "operative, though contained in a statute which was uncon-"stitutional. So, on the other hand, it seems clear that an "unconstitutional enactment would not repeal, by mere "implication, a former law."

"We therefore, conclude, both the Act of 1893 and the "amendment of 1897 being unconstitutional and void, they "do not repeal, by implication, the Act of 1891, or any part "thereof, as amended in 1893.

The People vs. *Butler Str. Foundry*, 201 Ill., 236-257.

Chicago, Wilmington and Vermilion Coal Co. vs. *The People*, 214 Ill., 421-454.

The constitutionality of the Act of 1891 has likewise been affirmed and its provisions applied and enforced in the following cases:

Ford vs. *Chicago Milk Shippers Co.*, 155 Ill., 166.

Harding vs. *American Glucose Co.*, 182 Ill., 557.

C. W. & V. Coal Co. vs. *The People*, 214 Ill., 421.

The purpose and object of forming the complainant Company and granting it the privilege of erecting factories

and entering upon the streets of Peoria for laying pipes was to obtain competition and a reduction of the price in the furnishing of gas.

(Rec. pp. 794, 828, 898, 1082, 1093, 1116, 1042, 1049, 1057, 1065, 1071.)

The complainant did enter the same field and the same territory in the City of Peoria and became a competitor with the Peoria Gas Light and Coke Company in furnishing gas to the citizens of Peoria. (Rec. pp. 1328-1343.) Mr. Little, the General Manager, saying in a general way, "Our piping system competes with that of the Peoria Gas Light and Coke Company." (Rec. p. 1337.)

The old Company had reduced its price to one dollar at the taking out of the charter by the new Company, the result of threatened competition, and had operated under this rate of charge until the new Company commenced March 11th, 1900.

When the complainant commenced operations on March 11th, 1900, and fixed its charges at 95 cents for light and 65 cents for fuel gas, the old Company as a result of the actual competition reduced its charges to 50 cents.

Thereupon as a further result of actual competition the new Company reduced its charges for both light and fuel to 30 cents and the old Company met this price.

This condition of things continued until July, 1900. Then the two companies sought a way out of the competition which they had entered upon.

Walsh owned practically all the stock of complainant and controlled its management. Walton, the Treasurer, and Little were his confidential men.

Little had been sent to Peoria by Walsh for the express purpose of assuming the active management of the complainant Company for him.

The Coffey's, Farrelly, Robison, and Henebery, the stockholders, and operators of the old Gas Company, had parted with their holdings, selling their stock, in April, 1900, for over 400 per cent. of its face value. William McKinley, of Champaign, had become the President and dictator of the policy of the old Company. Macomber, its Treasurer, lived in Maine.

Mr. Little narrates the circumstances leading to and resulting in a combination of the two Companies on prices. He says, on July 31st, 1900, we made a change to gross rate $1.25 for light, 85 cents for fuel, 10 cents off if paid before the 10th day of the month. The old Company made the same rate at the same time.

The question was asked him, "What if any conferences were there between the officers of your Company and the officers of the old Company or any representation of the two Companies with reference to the advance in the rates on or about July 31st, 1900?"

He said, "We had a conference in Chicago. I was in Chicago and had a talk in the office of either the Chicago National Bank Building or the Equitable Trust Company." (Rec. p. 1350.)

I went over there and talked with Mr. Walsh, and I think Mr. McKinley, President of the old Company, was there.

When I came in the statement was made that the time had about come to stop carrying on an unprofitable business and the question arose as to what was fair and equitable rates; what we thought ought to be charged and the discussion was entirely on these lines. Mr. McKinley had had experience and been identified with a number of gas plants for several years. I don't remember who suggested the rate, whether I or Mr. McKinley. The general talk was on the advisability of making those rates and I don't remember who suggested the rates that were adopted. (Rec. pp. 1349-1358.)

Immediately following this interview or conference in Chicago the two Companies caused identical notices of the advance in the prices to be published in the newspapers of Peoria, as follows:

Gas for fuel, 75 cents net. Gas bills falling due September 1, will be rendered at the following rates:

For gas used for light $1.25 per thousand cubic feet.

For gas used for fuel, registered through a separate meter, 85 cents per thousand cubic feet.

Gas for fuel, 75 cents net. Gas bills falling due September 1, will be rendered at the following rates:

For gas used for light $1.25 per thousand cubic feet.

For gas used for fuel, registered through a separate meter, 85 cents per thousand cubic feet.

A discount of 10 cents per thousand cubic feet will be allowed on all bills paid before September 10, making the net rates:
Lighting gas, $1.15;
Fuel gas, 75 cents.

Customers now using gas for light and fuel, where only one meter is set on the premises, will please call at the office of the Company, and arrange for an additional meter.

PEORIA GAS LIGHT & COKE COMPANY,
127 N. Jefferson Avenue.

A discount of 10 cents per thousand cubic feet will be allowed on all bills paid before September 10, making the net rates:
Lighting gas, $1.15;
Fuel gas, 75 cents.

Customers now using gas for light and fuel, where only one meter is set on the premises, will please call at the office of the Company, and arrange for an additional meter.

PEORIA GAS & ELECTRIC COMPANY,
420 Main Street.

(Rec. p. 26.)

He says that the foregoing notices as set out in defendant's answer are correct and that they were published at the time in the papers.

He claims that the rate so far as the complainant was concerned was determined toward evening of the day of the Chicago conference, but pretends he does not know when the old Company arrived at the same conclusion. But there seems to have been a further conference at which Walton was present, for Little says that prior to the time he advanced complainant's rates he knew the Peoria Gas Light and Coke Co. was to make an advance; that this information came to him from Mr. Walton (Rec. p. 1350);

that he had talked the matter over with Mr. Miller and Mr. Clarke and the conclusion as to their price was fixed at that time; and that there was an understanding that the Peoria Gas Light and Coke Co. would increase its rates.

It appears therefore that there was a conference between the officers of these two companies in Chicago for the express purpose of agreeing or combining upon a rate.

It appears that the question was fully talked over and that either Little or McKinley suggested the rate.

It appears also that before Little put the rate in force, he knew the old Company was to advance its rate and that there was in fact an understanding that the old Company would advance its rate.

While Little had gone home from the conference in the evening and Walton and Walsh remained with McKinley, who represented the old Company, and no doubt the final determination of the rate was made, and then Little obtained his definite information from Walton, as he said he did, that the old Company was going to advance the rate also.

This rate could only have been the one suggested in the conference at Chicago and set forth in the published notices.

The advertisement or notice of this advance in rates, coming at the same time to the same papers, in the same words and punctuation, was no mere coincidence but conclusive evidence of the complete understanding and arrangement between the two companies to regulate and fix the price of gas.

This is as strong as circumstances are ever found to establish an unlawful combination short of a written contract.

Friendly and intimate relations from this time on existed between these companies, strongly indicative of the understanding which Little says had been arrived at between them as to prices.

The complainant Company soon commenced furnishing gas to some service pipes of the old Company on South Adams street in the city. Soon an exchange of communication took place between them by which the new Company agreed to furnish to the old Company from its factory all the gas the old Company required for its 4,500 or 5,000 customers at 75 cents per thousand. (Exh. 32, Rec. p. 1466).

Both companies however continued the mutual rate to their general customers.

Robb, the superintendent of distribution for the complainant Company and complainant's employees under him, thereafter looked after the mains, service pipes and meters of the old Company and made repairs thereon and received his orders in regard thereto from officers of the old Company, but received pay therefor only from the new Company.

Robb's Testimony, Rec. pp. 646-1378 to 1381.

The old Company, after the execution of the contract (Exh. 32), ceased to manufacture gas, although much of its plant had been rebuilt but a few months before.

McKinley made Eustice, the superintendent of manufacturing for the complainant Company, custodian of the manufacturing plant of the old Company and also directed him to tear down the retorts and sell them the best he could, leaving that entirely to Eustice. He received no pay from the old Company.

The execution of this contract (Exh. 32) was a mere afterthought. While the communication from the old Company to the new, asking for such an arrangement, was dated October 2nd, 1900, and the contract is said to have been entered into October 21st, 1900, they had their understanding long before that, for Robb says (Rec. pp. 1203-1204), that he had charge of the work, and under the direction of Mr. Little, in September, 1901, put in the main, 16 inches in size, 800 or 900 feet long, from the purifiers of the complainant Company to the station meter of the old Company for the purpose of delivering gas to the Peoria Gas Light and Coke Company.

The old Company was not going out of business. On the contrary, it continued to exercise its franchise and distribute gas to its customers and maintained its corporate organization in full force.

But it went out of the manufacturing business and became dependent on the complainant Company for its gas. This it would not and could not have done if there had not been an understanding and combination between these companies as to the price which should be charged the consumer.

It is true there was a provision in the contract by

which it could be terminated on six months' notice during the first two years of the ten years it had to run and that complainant claims it was terminated in 1902 and no more gas furnished under it.

But this was only after it became apparent the question of an unlawful combination was likely to embarrass the complainant. The two companies being operated under a common understanding, it was easy to procure the cancellation of it.

The old Company must still take its gas from the new Company, for it had directed Eustice to dismantle and sell its retorts. It had been reduced to such a condition that it would have to be rebuilt to manufacture gas. (Rec. pp. 1177-1178.)

It is to be noted also that there is no pretense of any change in the understanding as to rates at which both companies continued to furnish gas to their customers.

The foregoing facts and circumstances establish our contention that the complainant Company was guilty of entering into an unlawful combination or understanding with the old Company in violation of the Act of 1891, within the following rules:

"It makes no difference that the agreement for the "illegal combination is not a formal written agreement. It "may be a verbal agreement or understanding, or scheme "not embodied in writing but evidenced by the action of the "parties."

Harding vs. *American Glucose Co.*, 182 Ill., 617.

"A mere tacit understanding to work a common pur-"pose is all that is essential to a guilty, actionable combina-"tion. Individual intent by two or more persons to do an "unlawful act, or do a lawful act by unlawful means, is the "first step in that regard. Next follows concurrence be-"tween such individuals, not concurrence of action merely, "but concurrence of mental intent to effect the common "purpose, each to aid the others in that regard.

"Mutuality in the undertaking may be secured without "any express agreement and without a spoken or written "word between the conspirators or a meeting of the mem-"bers of the combine, or their even all knowing each other, "or the precise things to be accomplished or plans for its "accomplishment either in a general way or in detail, being "distinctly stated by any member of the combine to any "other member. If there is a meeting of minds, brought "about in any way to accomplish the common purpose, the "essentials of a guilty combination are all satisfied."

C. W. & V. Coal Co. vs. *The People*, 214 Ill., 453.

Patnode vs. *Westenhaver*, 114 Wis., 460.

"It does not matter that the understanding did not "amount to an absolute monopoly.

C. W. & V. Coal Co. vs. *The People*, 214 Ill., 452.

United States vs. *Knight*, 156 U. S., 1.

But further, while "The corporation as an entity may "not be able to create a trust or combination with itself, its "individual shareholders may, in controlling it, together

"with it, create such a trust or combination as will consti-
"tute it with them, alike guilty of an unlawful combina-
"tion."

Ford vs. *Chicago Milk Shippers Asso'n*, 155 Ill., 166-180.

Taking into view the way in which the complainant Company was formed and its stock manipulated; the fact that Miller and Clarke were mere adjuncts to Walsh in promoting the enterprise; that Walsh's name and connection was kept secret from all other subscribers until an ordinance and consent was obtained from the City; that the Peoria people were induced to become subscribers and directors for the purpose of obtaining more favorable action by the City; that the subscription of these Peoria people were obtained through erroneous impressions created by the promoters as to what the Company would do; that as soon as the privilege or grant was obtained from the City, Clarke assigned the bulk of the stock to Walsh; that it was understood, as Clarke says, among the promoters from the first that the Peoria parties could have one-third the stock and Walsh would take the rest. (Rec. pp. 1009-1010.) That no bona fide assessment was ever made on the stockholders for money to carry out the enterprise; that the only assessment ever made of 20 per cent. was repaid the subscribers with interest. (Rec. pp. 1405-1408-1409.)

That the plant in fact was built at an expense of $434,000 without resort to the capital stock for the means so to do; that Walsh was the capitalist of the promoters and already experienced in and connected with the organization of gas plants and business (Rec. pp. 1004-1005).

That as soon as operations commenced the Peoria directors were asked to step aside and Walsh, and Little and Walton, his personal confidants, were installed in their places. (Rec. pp. 1012-1017.) That the stock of all these parties was placed in the control of Clarke and Walsh as managers under a trust agreement, held by the Equitable Trust Company; that this was in pursuance of an understanding between the promoters when Walsh became interested, that the stock would be held as a unit and a continuity of management preserved during a period of years. (Rec. pp. 1405-1261.) That thus Clarke and Walsh secured the sole management of the gas business of this Company for a period of years; that thereafter no stockholders' meeting had been held; that the directors of the Company were not consulted about the business of the Company and only performed formal acts; it is a legitimate inference that a trust arrangement existed between the complainant Company itself and these two managers, Clarke and Walsh, who have by the trust agreement, a continuity of management of this gas business for a period of years to the exclusion of the Company itself by its board of directors; all tending to an unlawful combination to regulate and fix prices and create a monopoly in the gas business in violation of the Act of 1891.

Ford vs. *Chicago Milk Shippers Co.*, 155 Ill., 166.

In so far as the understanding and agreement between the two companies tends to restrain or prevent one of them from discharging its full duty to the public in the manufacture and distribution of gas, even if the restraint is but partial, and makes the one Company dependent on the

other for its supply of gas and enables them thus to maintain one uniform rate or price for both companies, it is against public policy and a violation of the statute, and unlawful.

"In the instance of business of this character it "presumably cannot be restrained to any extent whatever "without prejudice to the public interest al Courts decline "to enforce or sustain contracts imposing such restraint, "however partial, because in contravention of public policy."

Gibbs vs. *Baltimore Gas Co.*, 130 U. S., 396, 408, 409, 410.

The foregoing authorities show the construction placed by the Supreme Court of Illinois upon the Anti-Trust Act of 1891 in question. The cases of *Ford* vs. *Chicago Milk Shipper's Co.; Harding* vs. *American Glucose Co.*, and *Chicago, Wilmington & Vermillion Coal Co.* vs. *The People*, each involved a charge of violation of this statute and are directly in point.

From a consideration therefore of the foregoing facts as they appear of record, and the construction of the statute in question as above indicated, we submit that the trial Court was fully justified in his opinion when he said, "The "Illinois Anti-Trust Law, as construed by the Supreme "Court of Illinois, leaves no doubt in my mind that this "record shows, on the part of this complainant, a violation "of that Act in the manipulation of the stock of both com- "panies, the use of the mains of both companies; the per- "forming by complainant's servants of the business of both "companies; the simultaneous agreement of rates between

"officers of both companies, and the contract in evidence "between the two companies—all lead to the inevitable "conclusion that there was an understanding between com- "plainant and the old Company such as the Illinois Act "prohibits."

II.

This brings us to the final conclusion of the trial Court, that a Court of Justice "will not aid the complainant to reap the fruits of such unlawful combination."

The rates of the old Company of $1.00 and $1.25 had enabled it to maintain a surplus of $80,000 in April, 1900, and maintained the stock of $50.00 per share at the price of $218.35, which was actually received for it.

There was one thing in the way of restoring those rates and magnificent profits and that was the competition between the two companies. This competition was highly beneficial to the public, its maintenance for the common good. The public and the City had a direct interest therein.

If competition was removed, then the City had the right and power as shown above, for the common good and general welfare, to limit the charge to a reasonable rate.

While this suit is not for the enforcement of any of the provisions of the unlawful understanding or combination between the two corporations, it is in aid thereof, and to enable the complainant to reap the fruits thereof. They were bound under the law to take into account not only the understanding at which they might arrive as to the rate to be charged, but also the authority and power of the City to limit that rate.

Having arrived at an understanding and combination between themselves as to the rate, unlawful as such conduct was, they might have reaped the reward of their combination and advance of rates had it not been for the interest that the public has in their business and the power and authority of the public through the City to enforce respect for that interest by an ordinance regulating such rates.

The complainant must therefore avoid the effect of the acts of the City in asserting its power to limit the rates, in order to get the benefits of its unlawful combination.

The suit therefore seeking to enjoin the city from enforcing its ordinance is directly in aid of the performance of the unlawful combination, understanding or agreement and to enable it to obtain the fruits of its unlawful conduct.

But this Court has said, following the language of the Supreme Court of Massachusetts, that the rule of law is of universal operation, that none shall, by the aid of a Court of justice, obtain the fruits of an unlawful bargain.

Gibbs vs. *Baltimore Gas Co.*, 130 U. S., 396-412.
Citing *Russell* vs. *DeGrand*, 15 Mass., 35-39.

It is a maxim of equity that a complainant must come with clean hands to invoke the aid of the Chancellor.

It is a shock to the conscience and our sense of justice and right that a party who has been guilty of entering into an arrangement or agreement with another in direct violation of a prohibitory, penal law should call upon a Court of equity to stay the hand that has the right, the power and

the duty to prevent it from reaping the benefits of its unlawful conduct.

The Gibbs case, *supra*, illustrates this position. In that case the illegal or unlawful combination or agreement was, as in this case, between two gas companies to regulate and fix the rates to customers. In that case, as in this, such combination was prohibited by statute. The action was at law, not on the illegal contract, or to enforce any of its provisions, but to recover compensation, by one who had merely negotiated and assisted in bringing about the unlawful combination.

He was not seeking to recover the immediate fruits of the unlawful bargain, but compensation from one of the parties for bringing it about, and it was held he could not, recover.

If a Court of law makes such an answer in that case, equally emphatic must be the answer of a Court of equity in the present case.

It is true that the appellant insists that the City of Peoria had no power or authority under the statutes of Illinois to regulate the price or charges at which appellant should furnish gas to consumers, and that therefore the City had no interest in or concern with the action of the two companies in fixing rates.

We insist however in the first place that the appellant is in no better position to ask relief on the ground that the City had no power to regulate the charges than it is on the ground that the rates prescribed are so low that the ordinance is unreasonable.

The attempt to stay the power of the City to enforce the ordinance, no matter on which ground, was to enable the appellant to reap the fruits of the unlawful combination with the old Company.

But if the power of the City to enact an ordinance regulating appellant's charges for gas furnished to consumers, is important in this connection, then we insist that the appellant is estopped, by bringing its action in the Federal Court, to claim that the State had not delegated its power to the City.

If the appellant contends that the ordinance is void for want of power under the State law to enact it, then it raises a question depending for its solution on the laws of Illinois and does not involve a federal question. In such case the Federal Court would be without jurisdiction.

Mayor, etc. of Savannah vs. *Holst*, 65 C. C. A., 449-450.

Peoples Gas Light & Coke Co. vs. *Chicago*, 114 Fed. Rep., 384.

Peoples Gas Light & Coke Co. vs. *Chicago*, 194 U. S., 1-14.

To maintain its standing in this Court, the appellant must abandon its contention that the City had no power under the State law to adopt an ordinance regulating its rates.

But in any event, the City of Peoria under the laws of Illinois, had power to regulate by ordinance the price at which gas should be furnished to consumers, subject only

to the rule that obtains as to all ordinances, viz: that such ordinance must be reasonable.

The ordinance granting to the appellant the privilege of constructing and operating gas works and laying gas mains and pipes in the streets and distributing gas, did not fix the rate of charges to consumers. Nothing was contained in it on this question. There was no contract whatever between the City and appellant as to the scale of charges.

The ordinance is as follows:—

"*Be it ordained by the City Council of the City of Peoria:*

"SECTION 1. Subject to the terms and conditions of "this ordinance, there is hereby granted to the Peoples Gas "and Electric Company, a corporation created and existing "under and by virtue of the laws of the State of Illinois, its "successors and assigns, the right to construct, repair, "maintain and operate gas works in the City of Peoria, to-"gether with the right of way along, upon and under all "the avenues, streets, alleys, highways, and public places in "said city, for the purpose of placing, operating, repairing "and maintaining one or more lines of gas mains and pipes "and all necessary feeders, service pipes, branches, cutoffs "and manholes in connection therewith, for the distribution "of natural or manufactured gas for light, fuel, heat and "power purposes.

"SECTION 2. That in pursuance to the petition of the "owners of the land representing more than one-half of the "frontage on the streets, avenues, and public highways

"hereinafter named, the right and authority, is hereby "granted to said Peoples Gas and Electric Company, its "successors and assigns, to construct, lay and maintain gas "mains, pipes, branches, feeders, service pipes, cutoffs, and "manholes, in and under and along the following named "streets, avenues, and highways in the said City of Peoria, "Illinois, for the purpose of furnishing the said City and "the inhabitants thereof with gas for light, fuel, heat and "power, viz:

(Here follows the names of the streets and avenues, etc.)

"Also the right and authority to connect the same "with mains, pipes, feeders and service pipes that may be "laid and maintained in and along any other streets, "avenues and highways in said City for the purpose afore-"said.

"SECTION 3. Provides that the complainant Company "shall enter into a bond of a thousand dollars to protect the "City and all persons or corperations, damaged or injured "by reason of negligence, etc.

"SECTION 4. Provides that the Ordinance is granted "on condition that the Company shall within six months "from date of acceptance begin the construction of gas "works and within eighteen months of acceptance begin the "manufacture and supply of gas.

"And also that within thirty days from the passage of "the Ordinance, they will deposit with the City Treasurer, "the sum of Five Thousand ($5,000.00) Dollars security

"for compliance with the provisions of this Section, to be "returned when the Company shall have expended Fifty "Thousand ($50,000.00) Dollars in the purchase of "property, etc.

"SECTION 5. Provides that the Company shall lay "mains, etc., when required, under certain conditions, by "the City.

"SECTION 6. Specifies the regulation and conditions "under which streets may be opened for the purpose of lay-"ing service pipes and mains.

"SECTION 7. The rights and privileges hereby granted "by this Ordinance are granted for a term of ninety-nine "(99) years from and after the acceptance of this Ordinance.

"SECTION 8. Provides that it shall take effect from "and after its passage. Passed April 18th, 1899. (Rec. "pp. 5 to 12.)

The Commissioner or Special Master to whom this case was referred, in his conclusion of law found and reported under the foregoing ordinance and the statute hereinafter set out, as follows:

"The City of Peoria (defendant) has the right under "the law of the State of Illinois to pass ordinances regulat-"ing the maximum price to be charged for gas furnished "by complainant to its citizens, subject, however, to the "well established principle that such ordinances must be "reasonable." (Rec. p. 57.)

To this finding of the Master, the complainant

excepted, but the Court below did not pass upon this exception unless it was inferentially involved in the finding and decree which was entered.

The business of the complainant is materially benefited by the franchise granted it by the State and the privileges granted it by the City. The business itself is of a *quasi* public character.

By entering upon this business under the powers and privileges granted the complainants, its property became "affected with a public interest, and ceased to be *juris privati* only."

The complainant having devoted its property and business to a use in which the public has an interest, it in effect has granted to the public an interest in that use and must submit to be controlled by the public for the common good.

Munn vs. *People of Illinois*, 94 U. S., 113.

Gibbs vs. *Baltimore Gas Co.*, 130 U. S., 396-408.

New Orleans Gas Co. vs. *Louisiana Light Co.*, 115 U. S., 650-659-660.

People vs. *The Chicago Gas Trust Co.*, 130 Ill., 268.

Chicago Gas Light & Coke Co. vs. *Peoples Gas Light & Coke Co.*, 121 Ill., 530.

City of Danville vs. *Danville Water Co.*, 178 Ill., 299.

State, ex rel., vs. *Gas Co.*, 34 Ohio State, 512.

Zanesville vs. *Gas Light Co.*, 47 Ohio St., 1.

The State of Illinois, by statute, has delegated its police power to regulate its rates to the City of Peoria.

The Statute of Illinois then and still in force in regard to the powers of the City Council, provide as follows:

"SECTION 1. The City Council in Cities, and Presi-"dent and Board of Trustees in Villages shall have the "following powers:

* * * * * *

"Thirteenth. To regulate the openings therein "(streets) for the laying of gas or water mains and pipes "and the building and repairing of sewer, tunnels and "drains and erecting gas lights; *provided*, however, that "any Company heretofore organized under the general laws "of this State or any association of persons organized or "which may be hereafter organized for the purpose of "manufacturing illuminating gas to supply cities or villages "or the inhabitants thereof with the same, shall have the "right by consent of the Common Council (subject to "existing rights) to erect gas factories and lay down pipes "in the streets or alleys of any city or village in this State, "subject to such regulations as any such city or village "may by Ordinance impose. * * * * *

"Sixty-sixth: To regulate the police of the City or "village, and pass and enforce all necessary police Ordi-"nances."

Revised Statute of Illinois, Chap. 24, Art. 5.

The statute above set forth under the authority of which the City was acting in granting the complainant the

privileges contained in the ordinance vests in the City the most comprehensive police power, making all such grants of privilege to corporations for the purpose of erecting factories and laying mains on the streets or alleys, "Subject to such regulations as any such City or village may by ordinance impose."

These regulations must be such as is for the "common good." They clearly refer to such control as the State might exercise under its police power and this power by this statute is delegated to the City. The power to regulate rates of charge is one of these police powers.

Munn vs. *People*, 94 U. S., *supra*.

New Orleans Gas Co. vs. *Louisiana Light Co.*, 115 U. S., 656-659-660.

Owensboro vs. *Owensboro Water Works Co.*, 191 U. S., 308.

This power to regulate rates is a governmental power continuing in its nature, which if it can be bargained away at all can only be by words of positive grant and if any reasonable doubt exists in regard thereto it must be resolved in favor of the existence of such power.

Owensboro vs. *Owensboro Water Works Co.*, 191 U. S., 308-370.

Boston Beer Co. vs. *Massachusetts*, 97 U. S., 25.

It is to be noted that the statute first provides that such companies as the complainant may erect gas factories and lay down pipes in streets and alleys with the *consent of the Common Council* and then adds further that such acts shall be "subject to such *regulations* as any such City may

by ordinance impose," thus showing that the matter of *regulation* was something different and additional to the *consent* of the City and is to be distinguished from conditions imposed as part of the consent.

This power to regulate, being a power of government, continuing in its nature, it follows that it may be exercised from time to time by succeeding Councils, as the exigencies of the case require.

Railroad Commission Cases, 116 U. S., 307-325.

Not only is this power to regulate a continuing one, but, the grant of this power to the City is as broad as the police power of the State to regulate. This Court in construing similar language, where it was contended that the reservation by statute, to the General Assembly of the power to prescribe in the government of corporations, "Such regulations and provisions as it may deem advisable" was not intended the power "to interfere with the internal business management of the corporation itself," held the construction contended for was too narrow. The question was whether this language is broad enough to cover the act of the Legislature authorizing cities to regulate charges for water service, and it was held that it was.

Freeport Water Co. vs. *Freeport City*, 180 U. S., 587-596.

THE POWER OF THE CITY TO PASS AN ORDINANCE REGULATING RATES MAY BE PREDICATED ALSO ON CLAUSE SIXTY-SIX ABOVE SET OUT WHICH VESTS GENERAL POLICE POWERS OF THE STATE IN THE CITY.

It is true Justice Grosscup in the case of *Mills* vs. *City of Chicago, et al.*, 127 Fed. Rep., 731, held that this clause was intended only to authorize the cities to organize a police force in the nature of a constabulary.

But he failed to note the construction put upon this clause by the Supreme Court of the State, although in a former opinion in the case of *Peoples Gas Light & Coke Co.* vs. *Chicago*, 114 Fed. Rep., 384, he held that this was a question of State law; and this being so the construction of this statute by the State Court should be followed:

In a case before the Supreme Court of Illinois the question was whether the city had authority to pass an ordinance prohibiting the keeping open of a place of business on Sunday.

The only authority for such an ordinance was the general grant of police power contained in this subdivision 66 of Sec. 62 of Article 5 of the City and Village Act which authorized cities to "regulate the police of the city or village "and enforce all necessary police ordinances."

The Court said, "It is insisted this clause only refers "to the organization and regulation of a police force. We "think this is a too narrow construction—that the clause is "not limited in its application to police officers; *but may*

"extend to and embrace a subject matter of police regula-
"tion under the general police power of the State."

McPherson vs. *Village of Chebanse*, 114 Ill., 46-49.

The same Court in a late case said, "Paragraph 66 "confers upon cities power to regulate the police of the city "or village and pass and enforce all necessary police ordi- "nances. We held in the case of *McPherson* vs. *Village* "*of Chebanse*, 114 Ill., 46, that the power conferred under "this clause is not limited in its application to the organiza- "tion and regulation of a police force, but it is extended to "embrace the subject matter of police regulation under the "general police power of the State."

City of Chicago vs. *Gunning System*, 214 Ill., 628-634-635.

This police power of the State is "that inherent or "plenary power which enables the State to prohibit all "things hurtful to the comfort, safety and welfare of society "and may be termed "the law of overruling necessity." "Anything which is hurtful to the public interest is subject "to the police power and may be restrained or prohibited "in the exercise of that power. All rights, whether tenable "or untenable, are held subject to this power.

Chicago vs. *Gunning System*, 214 Ill., 635.

It is under this same police power as shown by cases above cited that the State has the right to regulate the rates of charges of public service corporations. The case at bar pointedly illustrates the statement that it is "the law of overruling necessity," for the two gas companies made an

unlawful combination, which stifled and suppressed competition and left the City and its citizens subject to the exactions of an absolute monopoly.

There was certainly in this situation an "overruling necessity" which called for the exercise of that general police power vested in the City by virtue of clause 66.

But if any doubt remained as to the power of the City to adopt and enforce the ordinance in question from a consideration of clause 13 or 66 alone, such doubt will be removed by a consideration of the two together.

"An ordinance may derive its validity from several "different grants of power, and not depend solely upon any "single section or clause of a statute."

Gundling vs. *City of Chicago*, 176 Ill., 340-347.

Chicago vs. *Gunning System*, 214 Ill., 628.

It certainly would be no strained construction to hold that the general police power applied to all subjects with which the City was authorized to deal. It was clearly authorized to deal with the matter of distributing gas by gas companies. The exercise of the general police power mentioned in clause 66 with reference to this subject would certainly include fixing rates and charges of the Company in making such distribution.

We contend therefore that the City had the power and authority to regulate the rates of complainant. That the City had a direct interest in the rates which complainant sought to establish by its combination or understanding with the old gas Company; that complainant by its bill is

seeking the aid of a Court of equity to enable it to carry out and reap the fruits of an unlawful understanding or arrangement with the Peoria Gas Light & Coke Co. in a matter in which the City had a direct interest and authority to act; that the object of the bill is against the policy of the law and was properly dismissed for want of equity.

III.

Was the Ordinance Reasonable?

Whether the rate fixed by the ordinance complained of was a reasonable one or not is a question of fact and its determination was rendered immaterial to the decision of the case by the view the trial Court took on the question of unlawful combination.

If the finding and decision of the trial Court is correct and the bill was properly dismissed for want of equity because it was in aid of an unlawful combination and to enable complainant to reap the fruit of its unlawful conduct, the inquiry as to whether the rate fixed by the ordinance is reasonable or unreasonable is likewise immaterial in this Court.

If, however, this Court should find that the trial Court had erred in its finding and decree, still this Court would not, as we understand the practice here, enter upon an examination of the record as to the reasonableness or unreasonableness of the rate because this question was not examined and passed upon in the trial Court.

The findings of the Special Master and the exceptions thereto on this question were not disposed of.

The Court expressly limited his determination to a finding as to the unlawful combination and a dismissal of the cause on this ground and none other.

To determine the question of the reasonableness of

the rate now would require the examination by this Court of a voluminous record, going into extended detail of the methods of manufacture, the expenses of equipment and operation; the elements taken into consideration by the various expert witnesses in determining the cost of manufacture and distribution of gas and thus entail upon the Court, labor that must consume a great deal of time.

Before this Court is called upon to do this it is entitled to have these questions passed upon by the trial Court. This view was expressed by this Court in a case involving a determination of the reasonableness of the rate fixed by railroad commissioners, and again in a case where was involved the reasonableness of the rate of charge fixed by ordinance for furnishing water by a water company; in the latter case the Court saying:

"The other contention made by appellee is that the "rates fixed by the City are unreasonable. Upon this "contention we shall not pass. It depends upon many "questions of fact and of values to which the Circuit Court "gave no attention and on which it expressed no judgment. "It is better for a trial Court to determine such questions "in the first instance.

Owensboro vs. *Owensboro Water Works Co.*, 191 U. S., 358-372.

Chicago, Milwaukee, etc., Ry. vs. *Tompkins*, 176 U. S., 167-179.

For the foregoing reasons we shall suggest on this question only a few things appearing in the record, showing that the City was not acting recklessly and without due

regard to the rights of the complainant in fixing the rate complained of.

From the facts heretofore pointed out the promoters and those immediately connected with the Companies organization made such representation to the City Council and to some who became subscribers to the stock that the City was justified in inferring that the complainant could manufacture and sell gas at 75 cents per thousand cubic feet and realize a fair profit on the actual investment.

It is to be noted also as a strong circumstance that the old Company which had for several years been furnishing gas at $1.25 net for light and 75 cents for fuel, had been able to pay 10 per cent. dividends and accumulate a large surplus; that for one year before the complainant had commenced actual operations the old Company had reduced its price still further and were selling light and fuel at an average of 87½ cents at the time the complainants commenced actual operations, and at the time the old Companies' stockholders sold out in April, 1900, to McKinley and his associates the old Company had a surplus of $80,000 and its stock sold at a premium, bringing $218.00 for each $50.00 share.

If on rates averaging 87½ cents to $1.00 per thousand such a surplus could be accumulated and maintained and its stock in the face of actual competition maintained at such a high premium, it would seem to any fair-minded person that 75 cents per thousand would give a fair profit on the actual investment.

Furthermore, Mr. Henebery and Mr. Robison, each of

whom had been for many years stockholders and directors of the old Company and intimately connected with its business, testify that in their opinion gas could be manufactured and sold in Peoria at 75 cents per thousand at a fair profit.

These conclusions and deductions of Mr. Robison and Mr. Henebery were estimates based on the earnings of the old Company, and on the basis of its business transacted. Robison had been director and president for twenty years prior to 1898, and Henebery director and treasurer for twenty-five years prior to April, 1900.

Much weight should attach to the opinions of these two witnesses, especially in the light of what Little, the manager for the complainant, said. He testified, "the "treasurer has known more about the cost of manufacture "even than I did or the officers of the Company." (Rec. p. 1342.)

If people who are handling the business part of gas enterprises give the matter study and attention enough I do not see why they could not acquire a reasonable, definite and accurate knowledge pertaining to the cost of gas production and distribution and the profits connected with it."

Frederick Egner, who is a gas engineer, with extended experience in England and Germany, as well as this country, and who was intimately acquainted with the plant and business of the Peoria Gas Light and Coke Company, says that the cost of manufacturing gas in Peoria is not to exceed 30 cents per thousand. (Rec. p. 1493.)

Thomas Lyttalis, a general gas engineer, with experience in England, Canada, and this country, says gas can be manufactured in Peoria at 30 cents per thousand, and allowing for leakage, wear and tear, it can be produced for 47.75 cents per thousand. (Rec. pp. 1566-1579.)

In determining what is a reasonable rate the stockholders of the complainant are not the only persons whose rights or interests are to be considered. The rights of the public are not to be ignored. As said by this Court in another case, "It is alleged here that the rates prescribed "are unreasonable and unjust to the Company and its "stockholders but that involves an inquiry as to what is "reasonable and just for the public.

Covington & L. Turnpike R. Co. vs. *Sandford*, 164 U. S., 578.

Even though the business is divided between two companies so that each has fewer consumers and therefore less profits this does not of itself justify raising the rate above what would be profitable if one company alone had the entire business.

Covington & L. Turnpike Co. vs. *Sandford, supra.*

The City of Peoria was consuming from 150,000,000 to 165,000,000 cubic feet of gas per year.

The estimates and calculation of the witnesses for the complainant are based upon the sale by the complainant Company of only one-third of this total consumption or a little over 50,000,000 per year. It is also admitted that it is much more expensive per thousand to furnish only 50,000,000 than 150,000,000.

The basis therefore of the conclusions of complainant's witnesses is wrong and their conclusions upon which the Master based his report are wrong.

It is further to be borne in mind that, the data from which complainant deduces its conclusions as to what is the cost of production is taken from the period when complainant was inaugurating a new plant and its customers few and its business necessarily more expensive than when it would become thoroughly established. (Rec. pp. 383-384-339.) Furthermore that all this data was made after the filing of the bill and is practically evidence made to order for the purpose of supporting the bill in this case. This is enough to cast doubt on all its estimates of the cost of production.

From Exhibit "43" we may find the amount of gas sold by the complainant Company during the month of September, 1901, also the value of the residuals and the amount of the operating expenses and in this way the cost of gas.

The gas sold was		4,186,200 cu. ft.
Total expenditures per month as per vouchers, including proportionate share of taxes and insurance		$4,441.45
Residuals made—coke	$1,252.45	
Breeze	20.70	
Retort carbon	15.85	
Tar	302.55	
Ammonia	102.57	
Total		$1,694.12
Balance being net cost of gas sold		$2,747.33
Cost per thousand cubic feet		65 6-10 cents.

It appears from this same operating statement, Exhibit "43," that for the year after complainant commenced furnishing all the gas for both companies making its entire output 152,000,000 cubic feet per year, it was able to manufacture this gas at the cost of 45 6-10 cents per thousand.

This shows that it is 20 cents per thousand cheaper to manufacture the entire output for the City than only one-third thereof and the Master's finding is in error on this question.

Complainant's operating statement shows that the cost per thousand on an annual production of 51,178,300 cubic feet the cost per thousand at the consumers' meter was 77 9-10 cents, while it clearly appears from the same statement as indicated above that the cost when producing 152,000,000 is 46 5-10 cents. By this comparison it appears manufacturing the entire output by one plant and one company would be 32 3-10 cents cheaper.

Whether the rate is a reasonable one should be determined, as we contend, on the authority above cited, by the cost of production of the entire output by one management; that is by the method it could be done cheapest. This only would properly conserve the rights of the public.

We now call attention to the estimates of complainant's witnesses. In answer to a hypothetical question they respectively testified as to the cost of producing gas on the basis of the output being 50,000,000 per year, as follows:

J. H. Eustice	Rec. p. 383	$ .80
E. G. Cowdery	Rec. pp. 338-339	.83
E. G. Pratt	Rec. p. 408	.85
I. N. Knapp	Rec. p. 554	.87
K. N. Mitchell	Rec. p. 520	.89
L. Kellogg	Rec. p. 536	.90
D. McDonald	Rec. p. 621	1.01

In the above testimony as to the cost no consideration was taken of the residuals. But the record discloses that on a basis of manufacturing 51,198,300 cubic feet the value of the residuals were $20,373, or .39.7 cents per thousand.

Deducting the value and amount realized from the residuals per thousand cubic feet, that is .39.7 cents, from the cost given by the foregoing witnesses, and we have as the net cost of production for each witness the following:

J. H. Eustice	$ .40.3
E. G. Cowdery	.43.3
E. G. Pratt	.45.3
I. N. Knapp	.47.3
K. N. Mitchell	.50.3
L. G. Kellogg	.61.3
Harvey W. Brown	.66.3

The average of these, about 50 cents per thousand as the fair net cost, would leave 25 cents per thousand as the profits which was realized under the rate fixed by the ordinance in question.

If the manufacture of the entire output by one plant would make this net cost 20 cents less, it would make the net cost 30 cents, the price at which both Companies reduced it when their competition was at its height.

The above figures explain why the old Company which

had two-thirds of the entire output in the beginning was willing to make three to five-year contracts at 50 cents per thousand. It would afford them a profit even at this figure.

There are also many elements improperly taken into consideration by complainant in estimating the cost of the production of gas, such as expense of litigation in this case, and other matters; an excessive profit on the money invested, viz: 10 per cent.; the allowance for depreciation without taking into account the increase in value of the plant and its earning capacity with the growth of the city which largely exceeds the estimated depreciation.

We insist as above suggested that a careful analysis of the testimony will show that the rate fixed is a reasonable one. But understanding from the cases cited that this question will not now be examined by this Court, we refrain from making a complete analysis of the evidence on this subject; as it would make this brief needlessly long and prolix.

We respectfully submit that for the reasons above indicated the decree of the Court below should be affirmed.

WINSLOW EVANS,
Attorney for Appellee.

FILE COPY.

[19,367]

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1905.

No. 33.

PEORIA GAS AND ELECTRIC COMPANY, *Appellant*,

vs.

CITY OF PEORIA.

Office Supreme Court U.
FILED
OCT 25 1905
JAMES H. McKENNEY,
Cle

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

NOTICE OF PETITION FOR LEAVE TO FILE A BRIEF IN BEHALF OF DARIUS O. MILLS.

Notice is hereby given that the annexed petition for leave to file a brief in the above entitled cause on behalf of Darius O. Mills, petitioner, will be presented to the Supreme Court of the United States, in the City of Washington, on Monday, the 30th day of October, 1905, at the coming in of the court on that day or as soon thereafter as counsel can be heard.

New York, N., Y., October 23, 1905.

WILLIAM D. GUTHRIE,
52 William St., New York, N. Y.,
Counsel for Petitioner.

To

EDWARD C. RITSHER, Esq.,
152 Monroe St., Chicago, Ill.,
Counsel for Appellant.

WALTER H. KIRK, Esq.,
Masonic Temple, Peoria, Ill.,
WINSLOW EVANS, Esq.,
Peoria, Ill.,
Counsel for Appellee.

[19,367]

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1905.

No. 33.

PEORIA GAS AND ELECTRIC COMPANY,
Appellant,

vs.

CITY OF PEORIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

PETITION FOR LEAVE TO FILE A BRIEF ON BEHALF OF DARIUS O. MILLS.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Darius O. Mills, petitioner above named, who is not a party to the above entitled cause, but who, as party to another pending suit, has a large pecuniary interest in the question of the power of the city councils in the state of Illinois to fix by ordinance the price of gas furnished within the corporate limits of said cities, respectfully presents this his petition for leave to file a brief in the above entitled cause on said question of power, and, as grounds why his petition should be granted, respectfully shows to the court as follows:

That he is the complainant in another suit now pending in the Circuit Court of the United States for the northern district of Illinois, commenced July 6, 1903, wherein the city of Chicago and the People's Gas Light and Coke Company are defend-

ants, and wherein is involved the question of the power of the city council of the city of Chicago, under the laws of the state of Illinois, to fix the price of gas furnished within the corporate limits of the said city of Chicago, under an ordinance passed by the city council of said city on October 15, 1900, in all respects similar to the ordinance passed by the city council of the city of Peoria on September 4, 1900, under consideration in the case at bar.

That the power and authority of the city council of Peoria to pass said ordinance of September 4, 1900, is claimed by that city to have been conferred by section 1, article V of the City and Village Act of said state (1 Starr & C. Ann. Stat., 2d ed., pp. 689, 695, 707); and that the validity of the said ordinance of the city of Chicago is drawn in question in your petitioner's pending suit upon the ground that said statute does not confer any such power.

That in your petitioner's said suit against the city of Chicago and the People's Gas Light and Coke Company, now pending and undetermined, an injunction to restrain the city of Chicago from enforcing said ordinance because of its invalidity was granted by the Circuit Court of the United States for the northern district of Illinois, on the ground that no such power existed in the city council, and the court, by Grosscup, Circuit J., delivered an opinion holding such ordinance of the city of Chicago to be without authority and void, which will be found reported in 127 Fed. Rep. 731. The numerous authorities upon which such decision was based are cited in the brief presented herewith, which your petitioner is appre-

hensive may not otherwise be called to the attention of the court.

That the ordinance involved in your petitioner's said suit is the same ordinance considered by this court in the case of the *People's Gas Light and Coke Company* v. *City of Chicago*, 194 U. S. 1, in which case, although fully argued, the point of the power of the city council was not decided by the court because, among other things, it appeared that the bill in that suit had been dismissed without prejudice to another suit to test the question of power on the part of the city council of Chicago.

It is proper to add that since the commencement of your petitioner's suit the legislature of the state of Illinois, in 1905, has attempted to confer upon the city council of Chicago the express power to fix and regulate the price of gas, and that, in your petitioner's case as in the case at bar, no question is presented as to the validity of such subsequent legislation, the only point being that in September and October, 1900, no authority had been conferred by the legislature of the state of Illinois upon the city council of Chicago or the city council of Peoria to fix and regulate the price of gas.

All of which will more fully and at large appear in the proposed brief which is presented herewith.

NEW YORK, October 23, 1905.

DARIUS O. MILLS,
Petitioner.

WILLIAM D. GUTHRIE,
Counsel for Petitioner.

UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, } ss.:

DARIUS O. MILLS, being duly sworn, on oath says, that he is the petitioner named in and who has subscribed to the foregoing petition, that he has read the same, and that the matters therein stated are true.

DARIUS O. MILLS.

Subscribed and sworn to before me
this 23d day of October, 1905.

JOHN P. TUOMEY,
Notary Public,
Kings Co. N. Y.
Certificate filed in New York Co.

FILE COPY.

Office Supreme Court U. S.
FILED
NOV 7 1904
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 33.

PEORIA GAS AND ELECTRIC COMPANY, APPELLANT,

vs.

CITY OF PEORIA, APPELLEE.

MOTION AND NOTICE.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 19004

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 33.

PEORIA GAS AND ELECTRIC COMPANY, APPELLANT,

vs.

CITY OF PEORIA, APPELLEE.

Now come James Hamilton Lewis, corporation counsel of the city of Chicago, and Henry M. Ashton, special counsel for said city, and move that leave be granted them to file within fifteen days or within such time as shall be fixed by the court a reply to the brief filed in the above-named case by William D. Guthrie, counsel for Darius O. Mills.

JAS. HAMILTON LEWIS,
Corporation Counsel of City of Chicago.
HENRY M. ASHTON,
Special Counsel for City of Chicago.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 33.

PEORIA GAS AND ELECTRIC COMPANY, APPELLANT,

vs.

CITY OF PEORIA, APPELLEE.

To Messrs. EDWARD C. RITSHER and WM. T. ABBOTT, Chicago, *Attorneys for Appellant;* Mr. WINSLOW EVANS, Peoria, *Attorney for Appellee;* Mr. WILLIAM D. GUTHRIE, New York, *Attorney for D. O. Mills:*

You are hereby notified that on Monday, the 6th day of November, 1905, at the opening of court on said day, or as soon thereafter as counsel can be heard, we shall move that leave be given James Hamilton Lewis, corporation counsel of the city of Chicago, and Henry M. Ashton, special counsel for the city of Chicago, to file, within fifteen days from said date or within such time as shall be fixed by the court a brief in reply to the brief filed by William D. Guthrie, as counsel for Darius O. Mills in said cause, and shall base said motion upon the affidavit of Henry M. Ashton, copies of which motion and affidavit are hereto attached.

JAS. HAMILTON LEWIS,
Corporation Counsel of City of Chicago.
HENRY M. ASHTON,
Special Counsel of City of Chicago.

STATE OF ILLINOIS, } ss.
County of Cook, }

Henry M. Ashton, being duly sworn, on oath states that on the second day of November, A. D. 1905, before 5 p. m. on said day, he served the above-described notice and copies of the motion and affidavit attached to said notice upon Messrs. Edward C. Ritsher and William T. Abbott, 152 Monroe street, Chicago; Mr. Winslow Evans, Peoria, Illinois, and Mr. William D. Guthrie, 52 Williams street, New York city, by depositing in the United States post-office in the city of Chicago, postage prepaid, and addressed to each of the attorneys above mentioned at their respective addresses, copies of the foregoing notice and of the motion and affidavit thereto attached.

HENRY M. ASHTON.

Subscribed and sworn to before me this 2d day of November, A. D. 1905.

[SEAL.] MARSHALL GALLION,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1905.

PEORIA GAS AND ELECTRIC COMPANY, *Appellant*,
vs.
CITY OF PEORIA, *Appellee.* } No. 33.

STATE OF ILLINOIS, } ss.
County of Cook, }

Henry M. Ashton, being first duly sworn, on oath states that he is the special counsel for the city of Chicago in the suit of Darius O. Mills *vs.* The City of Chicago and The People's Gas Light and Coke Company, now pending in the

circuit court of the United States for the northern district of Illinois, eastern division thereof.

This affiant further states that on the 30th day of October, 1905, William D. Guthrie, counsel for Darius O. Mills in the suit last mentioned and now pending in the said circuit court of the United States for the northern district of Illinois, eastern division, was granted leave by this court, as this affiant has been informed, to file and did file a brief covering some forty-four pages as a friend of the court and for the reason that the above-entitled cause involves the question as to whether the cities and villages in the State of Illinois had the power by ordinance to regulate the price of gas charged by them, and that the same question is involved in the said suit of Mills *vs.* The City of Chicago.

This affiant further states that neither himself nor the corporation counsel of the city of Chicago had any notice or knowledge until the 1st day of November, 1905, that said application had been made or granted, and this affiant states that the said city of Chicago has the same interest in being permitted to file a brief in this cause as did the said Darius O. Mills, and for that reason the motion of this affiant and the said James Hamilton Lewis, as attorneys for the city of Chicago, should be granted and they should be given leave, within fifteen days or within such time as may be fixed by the court, to file a reply to the brief of said William D. Guthrie.

HENRY M. ASHTON.

Subscribed and sworn to before me this 2d day of November, A. D. 1905.

[SEAL.] MARSHALL GALLION,
Notary Public.

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 30 1905
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 33.

PEORIA GAS AND ELECTRIC COMPANY, *Appellant*,

vs.

CITY OF PEORIA.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF ON BEHALF OF DARIUS O. MILLS, PARTY TO ANOTHER PENDING CASE INVOLVING THE QUESTION OF POWER OF CITIES IN ILLINOIS TO FIX THE PRICE OF GAS.

WILLIAM D. GUTHRIE,
Of counsel for Darius O. Mills.

Washington, October 30, 1905.

[19,367]

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1905.

No. 33.

PEORIA GAS AND ELECTRIC COMPANY, *Appellant*,

vs.

CITY OF PEORIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF ON BEHALF OF DARIUS O. MILLS, PARTY TO ANOTHER PENDING CASE INVOLVING THE QUESTION OF POWER OF CITIES IN ILLINOIS TO FIX THE PRICE OF GAS.

STATEMENT OF THE QUESTION PRESENTED.

The case at bar involves the validity of an ordinance of the city council of the city of Peoria, passed September 4, 1900, providing that "the maximum price of gas furnished the city of Peoria and its citizens and all consumers of gas therein, shall not exceed the sum of seventy-five cents (75 cts.) per thousand cubic feet"; prescribing the quality of gas so furnished, and imposing upon "any company, corporation, person or persons" who shall exact a greater sum "a penalty of not less than twenty-five ($25) dollars, nor more than two hundred ($200) dollars for each and every offense," and a similar penalty for each and every permanent removal of a meter from the premises of any

such consumer of gas who is willing to pay for the gas furnished him "the price established and fixed" therein (record, pp. 17, 48).

By an amendment to the bill of complaint, it was alleged "that the only power or authority vested in said city to pass such ordinance" was "the supposed authority granted to it by the legislature of the State of Illinois as contained in clause thirteen, sec. 1, art. V, chap. 24 of the Revised Statutes of Illinois, of the general incorporation act for cities, towns and villages in said State" (which clause is then set out in full in said amendment), and also "by virtue of the general police powers delegated to it by the legislature of the said State of Illinois" (record, pp. 32–33). The provisions thus alleged as the supposed basis of power and authority to pass the ordinance in question may be more conveniently referred to as subdivisions *thirteenth* and *sixty-sixth* of section 1, article V, of the City and Village Act, approved April 10, 1872, in force July 1, 1872 (1 Starr & C. Ann. Stat., 2d ed., pp. 689, 695, 707), which read as follows:

> "§ 1. The city council in cities, and president and the board of trustees in villages, shall have the following powers: . . .
>
> "*Thirteenth.*—To regulate the openings therein [in streets] for the laying of gas or water mains and pipes, and the building and repairing of sewers, tunnels and drains, and erecting gas lights: *Provided, however*, that any company heretofore organized under the general laws of this state, or any association of persons organized, or which may be hereafter organized for the purpose of manufacturing illuminating gas to supply cities or villages, or the inhabitants thereof, with the same, shall have the

right, by consent of the common council (subject to existing rights), to erect gas factories, and lay down pipes in the streets or alleys of any city or village in this state, subject to such regulations as any such city or village may by ordinance impose."

"*Sixty-sixth.*—To regulate the police of the city or village, and pass and enforce all necessary police ordinances."

The bill of complaint, among other things, prayed that "the said ordinance of September 4th, A. D. 1900, may be adjudged and delared invalid, null and void" (record, p. 20).

In the answer of the "City of Peoria to the bill of complaint as amended" (record, p. 32), it was alleged "that as to the allegation in said bill that said ordinance is void for want of power in the city council of said city to pass the same, respondent can neither admit nor deny such statement, but alleges that said ordinance was passed in good faith by said common council and in the belief that it had power to pass ordinances for the promotion of the welfare of the inhabitants of the said city and to prevent acts of wrong, injustice and extortion from being practised against said inhabitants" (record, p. 28).

The special master, to whom the cause was referred, concluded as a proposition of law that "the city of Peoria (defendant) has the right under the laws of the State of Illinois, to pass ordinances regulating the maximum price to be charged for gas furnished by complainant to its citizens" (record, p. 57, conclusion 4), and again, that "the state has conferred upon defendant the right, within its corporate boundaries, to lay out

streets, to regulate the use of the same, and to grant complainant the right to occupy the same for the purpose of laying its mains and connecting service pipes for the distribution of gas, subject, however, to such regulations as it might by ordinance impose" (record, p. 58, conclusion 9). The final conclusion, however, was that "the ordinance in controversy in this case is unreasonable in respect to the price as therein fixed," and that "the enforcement of its provisions against complainant would constitute the taking of the property of the complainant without due process of law" (record, pp. 61–62, conclusion 25).

The Circuit Court, however, while recognizing the existence of the questions "that the city council had no power to pass the ordinance, that the rate as fixed by the ordinance is unreasonably low," and "that its enforcement would deprive the complainant of its property without due process of law," declined to decide either of these questions because of its decision that the complainant, having entered into an illegal combination in violation of the Illinois anti-trust law (act approved June 11, 1891, in force July 1, 1891; L. of Ill. 1891, p. 206), the bill of complaint should be dismissed for want of equity and the injunction theretofore issued to prevent the enforcement of said ordinance should be dissolved (record, pp. 98, 140, 142, 144). The complainant thereupon appealed to this court, and the injunction was continued pending such appeal (record, pp. 143, 145).

The question of the power of the city council of the city of Peoria to enact the ordinance of September 4, 1900, under the provisions of law above set out, is, therefore, before the court, and, if the decision of the

Circuit Court dismissing the bill for want of equity, because of the complainant's alleged violation of the Illinois anti-trust statute, be not sustained, the questions decided by the master as to the power to enact the ordinance and as to its reasonableness will then be squarely presented. With the question of reasonableness this brief is not concerned. The question, however, of the power of city councils under the City and Village Act of 1872, to fix the price of gas, applies alike to the city councils of Chicago and of Peoria, and this brief is filed on behalf of Darius O. Mills, who is the complainant in a suit now pending in the Circuit Court of the United States for the northern district of Illinois, wherein the power of the city council of Chicago under the provisions of that statute to pass an ordinance on October 15, 1900, in all respects similar to the ordinance of the city council of Peoria, passed September 4, 1900, is drawn in question. The decision of Circuit Judge Grosscup on demurrer to the bill of complaint in such other pending suit is reported as *Mills* v. *City of Chicago*, 127 Fed. Rep. 731, and reference thereto will show that the ordinance there involved and the question of power to enact it are substantially identical with the ordinance and question of power in the case at bar, and that the court held that no such power had been delegated to the city council of Chicago.

Subsequently, in May, 1905, the legislature of Illinois expressly conferred upon the city council of the city of Chicago the power "to prescribe by ordinance maximum rates and charges for the supply of gas" (L. of Ill. 1905, p. 11[illegible]; see appendix to this brief).

As the ordinance in the case at bar is alleged to have been passed and adopted by the city council of the city of Peoria "under the supposed authority granted to it by the legislature of the state of Illinois as contained in" the statute above set out (record, p. 32), and as the answer of the city of Peoria "alleges that said ordinance was passed in good faith by said common council and in the belief that it had power to pass ordinances for the promotion of the welfare of the inhabitants of said city" (record, p. 28), and as the invalidity of said ordinance is claimed, not only because of the want of power in the city council under the laws of the state of Illinois, but also, because it is so unreasonable in its operation as to deprive the complainant of its property without due process of law and deny it the equal protection of the laws, in violation of the constitution of the United States (record, p. 19), which latter claim was sustained by the master to whom the cause was referred (record, pp. 60, 61, conclusions 18, 25), this is not a case where the jurisdiction is defeated because it proceeds alone upon the theory that the ordinance in question was void because it was not passed under legislative authority and hence was not action by the state of Illinois within the meaning of the Constitution (*Hamilton Gas Light Co.* v. *Hamilton City*, 146 U. S. 258, 265; *Barney* v. *City of New York*, 193 U. S. 430, 437). On the contrary, the case comes well within that class of cases where the jurisdiction is sustained because it appears that the defendant grounded its right to enact the ordinance in question upon supposed legislative authority which it assumed had been

delegated to it by the state in a designated act of the legislature, and which act, if construed as conferring the authority claimed, would violate rights secured by the Constitution. The master, as stated above, actually construed the statute as conferring the authority claimed and held that rights secured by the federal constitution had been violated (record, pp. 57, 58, 59, 61, conclusions 4, 9, 12, 18, 25). *Hamilton Gas Light Co.* v. *Hamilton City*, 146 U. S. 258, 265–266; *City Railway Co.* v. *Citizens' Railroad Co.*, 166 U. S. 557, 564; *Penn Mutual Life Insurance Co.* v. *Austin*, 168 U. S. 685, 694; *Walla Walla* v. *Walla Walla Water Co.*, 172 U. S. 1, 7–10; *St. Paul Gas Light Co.* v. *St. Paul*, 181 U. S. 142, 147–148; *Vicksburg Waterworks Co.* v. *Vicksburg*, 185 U. S. 65, 81–82; *Davis & Farnum Mfg. Co.* v. *Los Angeles*, 189 U. S. 207, 216–217; *Cleveland* v. *Cleveland City Ry. Co.*, 194 U. S. 517, 530–531; *Savannah, Thunderbolt, &c., Ry.* v. *Savannah*, 198 U. S. 392, 396.

In such a case, it is well settled, this court is not restricted to the consideration of the federal question, but acquires jurisdiction of the entire case and of all questions involved in it. *Field* v. *Barber Asphalt Co.*, 194 U. S. 618, 620–621; *Davis & Farnum Mfg. Co.* v. *Los Angeles*, 189 U. S. 207, 216; *Penn Mutual Life Insurance Co.* v. *Austin*, 168 U. S. 685, 695; *Scott* v. *Donald*, 165 U. S. 58, 73; *Press Publishing Co.* v. *Monroe*, 164 U. S. 105, 111; *Chappell* v. *United States*, 160 U. S. 499, 509; *Casey* v. *Houston, &c., Ry. Co.*, 150 U. S. 170, 181; *Horner* v. *United States*, 143 U. S. 570, 576–577.

I.

THE ESTABLISHED RULES OF STATUTORY CONSTRUCTION APPLICABLE TO THE POWERS OF MUNICIPAL CORPORATIONS.

In the case of *Barnett* v. *Dennison*, 145 U. S. 135, 139, Mr. Justice Brown, delivering the unanimous opinion of the court, said:

> "It is the settled doctrine of this court that municipal corporations are merely agents of the state governments for local purposes, and possess only such powers as are expressly given, or implied because essential to carry into effect such as are expressly granted."

This principle was reiterated in the strongest language in *Atkin* v. *Kansas*, 191 U. S. 207, 220.

And such is also the settled doctrine in Illinois. Thus in *City of Chicago* v. *Blair*, 149 Illinois, 310, 318, the Supreme Court of Illinois said that—

> "The tendency of municipal government to arrogate to itself power and to encroach upon the rights of the citizen has led to the establishment of the statutory rules of construction limiting its powers to those expressly granted, or arising, by reasonable and necessary implication, from the grant."

And in the recent case of *Coquard* v. *Village of Oquawka*, 192 Illinois, 355, 365 (1901), the court said:

> "This court, as well as the Supreme Court of the United States, has quoted with approval the rule laid down by Judge Dillon in his work on Municipal Corporations, that 'a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation

—not simply convenient, but indispensable' (*Cook County* v. *McCrea*, 93 Ill. 236; *Huesing* v. *City of Rock Island*, 128 *id.* 465; *Merrill* v. *Monticello*, *supra*[1].) 'Any reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.' See, also, *Marsh* v. *Fulton*, 10 Wall. 676; *Ottawa* v. *Carey*, 108 U. S. 110; *Jonesboro* v. *Cairo*, 110 *id.* 192; *Kelly* v. *Milan*, 127 *id.* 139."

In *Kiel* v. *City of Chicago*, 176 Illinois, 137, 141, the court said:

"The power to pass an ordinance and impose a penalty for its violation is to be strictly construed, and is not to be extended, by implication, to persons or things not expressly within the terms of such power."

So, also, in *Smith* v. *McDowell*, 148 Illinois, 51, 62, the court said:

"These municipal corporations are instrumentalities of the state, exercising such powers as are conferred upon them in the government of the municipality. Their power is measured by the legislative grant, and they can exercise such powers only as are expressly granted, or are necessarily implied from the powers expressly conferred."

See, also, *Freeport Water Co.* v. *Freeport City*, 180 U. S. 587, 598; *Citizens' St. Ry.* v. *Detroit Railway*, 171 U. S. 48, 54; *Detroit Citizens' St. Ry. Co.* v. *City of Detroit*, 64 Fed. Rep. 628, 639; *Old Colony Trust Co.* v. *City of Atlanta*, 83 Fed. Rep. 39, 44, affirmed 88 Fed. Rep. 859; *Cleveland City Ry. Co.* v. *City of Cleveland*, 94 Fed. Rep. 385, 396, affirmed

[1] 138 U. S. 673, 681.

194 U. S. 517; *Laugel* v. *City of Bushnell*, 197 Illinois, 20, 27; *Town of Drummer* v. *Cox*, 165 Illinois, 648, 650; *City of Chicago*, v. *McCoy*, 136 Illinois, 344, 353; *Seeger* v. *Mueller*, 133 Illinois, 86, 94; *Emmons* v. *City of Lewistown*, 132 Illinois, 380, 384; *Huesing* v. *City of Rock Island*, 128 Illinois, 465, 477; *Lewisville Natural Gas Co.* v. *State*, 135 Indiana, 49, 51; *City of Noblesville* v. *Noblesville Gas, etc., Co.*, 157 Indiana, 162, 167; *Muncie Natural Gas Co.* v. *City of Muncie* (Ind. 1903), 66 N. E. 436, 438; *In re Pryor*, 55 Kansas, 724, 727; *City of St. Louis* v. *Bell Telephone Co.*, 96 Missouri, 623, 628; *Wabaska Electric Co.* v. *City of Wymore*, 60 Nebraska, 199, 202; *Schroeder* v. *Gas & Water Co.*, 20 Pa. Superior Ct. 255, 259; *Tacoma Gas & Electric Light Co.* v. *Tacoma*, 14 Washington, 288, 291; *State ex rel. Telephone Co.* v. *City of Sheboygan*, 111 Wisconsin, 23, 38.

It necessarily follows from these decisions that all doubts concerning the existence of power in a municipal corporation are to be resolved against it and in favor of the citizen, and that the presence of a fair and reasonable doubt is fatal to the existence of such power. *Minturn* v. *Larue*, 23 How. 435, 436; Dillon Municip. Corp., 4th ed. § 89; *Seeger* v. *Mueller*, 133 Illinois, 86, 94; *Emmons* v. *City of Lewistown*, 132 Illinois, 380, 384; *Coquard* v. *Village of Oquawka*, 192 Illinois, 355, 365; *Laugel* v. *City of Bushnell*, 197 Illinois, 20, 27; *Lewisville Natural Gas Co.* v. *State*, 135 Indiana, 49, 51; *Schroeder* v. *Gas & Water Co.*, 20 Pa. Superior Ct. 255, 259.

In the case of *Laugel* v. *City of Bushnell*, 197 Illinois, 20, 27, decided in June, 1902, since the adoption of the ordinance in question, the Supreme Court of Illinois used the following language:

> "The court [referring to the case of *Emmons* v. *City of Lewistown*, 132 Ill. 380, 384, *supra*], correctly remarked that to concede that it was doubtful whether the legislature had granted such power was to deny the existence of the power."

And in *Seeger* v. *Mueller*, 133 Illinois, 86, the court had said (p. 94):

> "Any fair, reasonable doubt concerning the existence of any power is resolved against the corporation, and the power is denied."

So, in *Interstate Com. Commission* v. *Railway Co.*, 167 U. S. 479, 494, this court in denying that Congress had empowered the Interstate Commerce Commission to fix transportation rates, among other things, said:

> "The question debated is whether it vested in the commission the power and the duty to fix rates; and the fact that this is a debatable question, and has been most strenuously and earnestly debated, is very persuasive that it did not. The grant of such a power is never to be implied."

And, in *City of Fort Scott* v. *W. G. Eads Brokerage Co.*, 117 Fed. Rep. 51, 54, the Circuit Court of Appeals for the eighth circuit, Sanborn, C. J., delivering the opinion of the court, among other things, said:

> "Municipal corporations are the creatures of the statutes under which they are organized and operated. By those statutes their powers are granted, measured and limited. Beyond the limits of the powers there expressly granted and those fairly im-

plied therefrom or incident thereto, they cannot lawfully act or agree to act, and a fair and reasonable doubt of the existence of a corporate power is fatal to its being."

In the light of these established principles, we may now analyze the statutory provisions relied on by the city of Peoria as conferring the power to fix or regulate the price of gas.

II.

APPLICATION OF THE ESTABLISHED PRINCIPLES OF CONSTRUCTION TO THE STATUTE UNDER CONSIDERATION.

It cannot be seriously contended that the City and Village Act of 1872 conferred the power to fix the maximum price of gas in express terms. The only claim is that the power may be implied as incident to the following powers expressly granted to city councils, viz.: (1) to provide for the erection of gas factories and the laying down of pipes, and (2) to regulate the police of the city and to pass and enforce all necessary police ordinances. The scheme of the act of 1872 is that of a general statute covering the incorporation of cities and villages and dealing in a comprehensive form with the powers to be exercised by them. Certain specific powers were delegated to the city council in cities, including the powers above stated, which are conferred in and by the *thirteenth* and *sixty-sixth* subdivisions of section 1, article V, of the City and Village Act of 1872, *supra* (1 Starr & C. Ann. Stat. 2d ed., pp. 689, 695, 707), as follows:

"§ 1. The city council in cities, and president and the board of trustees in villages, shall have the following powers: . . .

"*Thirteenth.*—To regulate the openings therein [in streets] for the laying of gas or water mains and pipes, and the building and repairing of sewers, tunnels and drains, and erecting gas lights: *Provided, however,* that any company heretofore organized under the general laws of this state, or any association of persons organized, or which may be hereafter organized for the purpose of manufacturing illuminating gas to supply cities or villages, or the inhabitants thereof, with the same, shall have the right, by consent of the common council (subject to existing rights), to erect gas factories, and lay down pipes in the streets or alleys of any city or village in this state, subject to such regulations as any such city or village may by ordinance impose."

"*Sixty-sixth.*—To regulate the police of the city or village, and pass and enforce all necessary police ordinances."

Aside from the fact that there is nothing in the language above quoted which would imply any intention to vest the important power of fixing and regulating the price of gas, an analysis of the City and Village Act of 1872 will show conclusively that the legislature did not intend to delegate to the city council the power to regulate the rates or prices of gas companies.

The statute expressly dealt with the subject of delegating to city councils the power to regulate the rates or charges of those engaged in various businesses, but it omitted any delegation of power to regulate the price or charges of gas. Thus, the express power was delegated to city councils—

1. "To fix the rate of wharfage and dockage" (Art. V, subdiv. 36).

2. "To prescribe the compensation" of hackmen,

omnibus drivers "and all others pursuing" like occupations (subdiv. 42).[1]

3. "To establish ferries, toll bridges, and license and regulate the same, and, from time to time, fix tolls thereon" (subdiv. 87).

4. "To authorize any person or private corporation to construct and maintain [water works] at such rates as may be fixed by ordinance" (Art. 10, subdiv. 1).

These provisions are found in the same statute of which other provisions are now claimed impliedly to authorize the fixing of the price of gas.[2] Indeed, they are all subdivisions of the same section which purports to enumerate the powers of cities and villages in the state,[3] except the provision as to waterworks, which will be found in a subsequent article of the same statute.[4]

In *pari materia* to these provisions expressly conferring municipal power to fix the rates of charge by individuals or private corporations for certain designated *quasi* public services, are also other statutes, namely, conferring power on any city or village to "fix the rates of toll" on bridges and ferries owned by it (L. of Ill. 1877, p. 61; 1 Starr & C. Ann. Stat., 2d ed., p. 818; L. of Ill. 1881, p. 57; L. of Ill. 1891, p. 72; 1 Starr & C. Ann. Stat., 2d ed., p. 819); authorizing cities, towns and villages owning and operating water-works to "assess and collect" such

[1] This has been construed to include street cars. *Union Traction Co.* v. *City of Chicago*, 199 Illinois, 484, 519.

[2] City and Village Act, L. 1871–1872, p. 218.

[3] § 1 of art. V, subds. 13th, 16th, 42nd, 66th, 87th, p. 227 *et seq.*

[4] § 1 of art. 10, p. 259.

"rates for the use and benefit of water" supplied by such waterworks as they "shall deem just and expedient" (L. of Ill. 1873, p. 191; 1 Starr & C. Ann. Stat., 2d ed., p. 864); providing that "the county board shall fix the rate of ferriage at each ferry" (R. S. of Ill. 1845, p. 253; R. S. of Ill. 1874, p. 531; 2 Starr & C. Ann. Stat., 2d ed., p. 1957), and shall also "fix the rates of toll" on toll bridges (R. S. of Ill. 1845, p. 253; R. S. of Ill. 1874, p. 1060; 3 Starr & C. Ann. Stat., 2 ed., p. 3904), and "fix from time to time such rates of toll to be charged" on toll roads "as may be deemed just and proper and for the public good" (L. of Ill. 1877, p. 211; 3 Starr & C. Ann. Stat., 2d ed., p. 3908); directing the board of railroad and warehouse commissioners to make "a schedule of reasonable maximum rates of charges for the transportation of passengers and freight and cars" on railroads doing business in the state (L. of Ill. 1873, p. 139; L. of Ill. 1873–1874, p. 129; L. of Ill. 1885, p. 232; 3 Starr & C. Ann. Stat., 2 ed., p. 3314); declaring that said board "shall, also, have power to fix the rate of charges for the inspection of grain" (L. of Ill. 1871–1872, p. 768; 3 Starr & C. Ann. Stat., 2d ed., p. 3322; L. of Ill. 1897, p. 301); and prescribing "the maximum charge for storage and handling of grain" (L. of Ill. 1871–1872, p. 769; L. of Ill. 1877, p. 170; 3 Starr & C. Ann. Stat., 2d ed., p. 3323.)

It, therefore, appears that the legislature was entirely familiar with the terms usually employed in conferring upon a municipality the power to fix rates and charges. Manifestly, if it had intended to confer power to fix the price of gas it would have done so when the subject of gas

was under consideration, by the use of the same exact and simple language deemed by it necessary for that purpose in the case of street cars, hackmen, wharves, docks, ferries, toll bridges, waterworks, railroads and grain elevators. As Mr. Justice Brewer said in *Interstate Com. Commission* v. *Railway Co.*, 167 U. S. 479, 495, speaking of the power to regulate rates:

> "The language by which the power is given had been so often used and was so familiar to the legislative mind and is capable of such definite and exact statement that no just rule of construction would tolerate a grant of such power by mere implication."

It is, therefore, reasonable to assume that the legislature deemed it necessary to confer the power to fix rates by express words, as it did in the case of street cars, hackmen, wharves, docks, ferries, toll bridges, waterworks, railroads and grain elevators and that its omission of any grant of such power in respect of gas and other public utilities is of conclusive significance, and precisely as if it had declared that it would not grant the power. The case of *City of Cairo* v. *Bross*, 101 Illinois, 475, 478, would seem to be exactly in point. The court, by Mr. Justice Mulkey, there said:

> "When the legislature, by the general incorporation act, declares that the corporate authorities of cities and villages organized and acting under its provisions shall have power to license certain occupations and kinds of business, specifically enumerating them, such declaration must, by a familiar canon of construction, be construed precisely as if the act in express terms inhibited the licensing of all trades and occupations not contained in the enumeration. In discussing this principle, the Supreme Court of

> the United States, in *Thomas* v. *West Jersey Railroad Co.*, 101 U. S. 82, says: 'Conceding the rule applicable to all statutes, that what is fairly implied is as much granted as what is expressed, it remains that the charter of a corporation is the measure of its powers, and that the enumeration of those powers implies the exclusion of all others.'"

In *C. & N. W. Ry. Co.* v. *City of Chicago*, 148 Illinois, 141, 159, the court quotes with approval the following from Endlich on Interpretation of Statutes, sec. 399:

> "Where there is in the same statute a particular enactment, and also a general one, which, in its most comprehensive sense, would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment."

And in *Kiel* v. *City of Chicago*, 176 Illinois, 137, 140, the court expressly limited one of the very provisions now in question, namely, clause 66, conferring power to pass police ordinances, and said:

> "The powers conferred by the last two clauses are express powers specifically enumerated, and by a familiar canon of construction it will be presumed the act in express terms inhibited the licensing of all trades and occupations not contained in the enumeration. The principle is, that a power may be fairly implied as to police, but where a power is expressly enumerated in the charter of a corporation that is the measure thereof, and the enumeration of such power implies the exclusion of all others. *City of Cairo* v. *Bross*, 101 Ill. 475; *Huesing* v. *City of Rock Island*, 128 *id.* 465. Clause 66, having reference to authority to

pass police ordinances, does not extend the express power conferred by the provisions of clause 91."

The point now being discussed arose in *Tacoma Gas & Electric Light Co.* v. *Tacoma*, 14 Washington, 288, as to water and gas regulation, and the principle of construction so firmly established by the Illinois decisions was applied. It was held that no power existed in the municipality to fix the price of gas, the court, by Scott, J., saying (p. 293):

> "It is worthy of note that the legislature thus in two paragraphs relating to kindred subjects, expressly conferred the power to fix the price of water, and withheld it as to gas or other light, *thus limiting the power over purveyors of gas to 'regulation.'* . . . It is sufficient to say, however, that the legislature having passed a general law upon the particular subject, the power to fix such rates must be found therein, if at all."

So, in *City of St. Louis* v. *Bell Telephone Co.*, 96 Missouri, 623, 632, holding that the general police power to "regulate" telephones and telephone companies, did not include the power to fix maximum telephone rates, the court, by Black, J., said:

> "To say that under this general power the city may fix rates for telephone services would be going entirely too far. *This conclusion is manifest when we consider that the charter points out with particularity those cases in which the city may fix rates and charges.*"

Not only has the legislature thus by conferring power to fix rates other than gas rates expressed its intention to withhold the power to fix gas rates, but it has even more directly expressed that intention by its special action on the subject of gas rates in the act of June 5,

1897 (L. of Ill. 1897, p. 177) and in the act of May 18, 1905 (L. of Ill. 1905, p. 111).

This power over prices does not seem to meet any of the tests of implied powers (Dillon's Mun. Corps., sec. 89, already cited), but is a power which stands by itself, and may be granted or not as the legislature may see fit, being so essentially distinct from other powers that it cannot be granted by implication.

A.

AS TO SUBDIVISION THIRTEENTH OF SECTION 1, ARTICLE V, OF THE CITY AND VILLAGE ACT.

Subdivision *thirteenth* of section 1, of article V, of the City and Village Act of 1872 confers power "to regulate the openings" in streets, and makes the erection of gas factories and the laying down of pipes "in the streets or alleys of any city or village in this state, subject to such regulations as any such city or village may by ordinance impose."

Applying to this provision the settled rules of construction heretofore adverted to, it is clear that the legislature never intended thereby to delegate the power to fix the prices to be charged for gas. It was so construed by the Circuit Court of the United States for the northern district of Illinois in the case, now pending in that court, of *Mills* v. *City of Chicago*, 127 Fed. Rep. 731, where Circuit Judge Grosscup held that the city council of Chicago had no power to fix gas rates, and said (p. 734):

> "The chief claim of the city is based on the thirteenth section. The section reads as follows:
>
> "'To regulate the openings therein [in streets] for the laying of gas or water mains and pipes,

and the building and repairing of sewers, tunnels and drains and erecting gas lights: *Provided, however*, that any company heretofore organized under the general laws of this state, or any association of persons organized or which may be hereafter organized for the purpose of manufacturing illuminating gas to supply cities or villages, or the inhabitants thereof, with the same, shall have the right, by consent of the common council (subject to existing rights), to erect gas factories, and lay down pipes in the streets or alleys of any city or village in this state, subject to such regulations as any such city or village may by ordinance impose.'"

"Read as an entirety, the section clearly grants no general power to regulate rates. Thus treated, the last clause, 'subject to such regulations as any such city or village may by ordinance impose,' relates back to, and is limited by, the opening clause which is taken up solely in the regulation of openings in streets for the laying of gas or water pipes. But the court is asked, first, to divorce the proviso from the balance of the section, so that the proviso may stand as a section apart, and then to interpret the concluding clause as if the word 'regulations' was meant to include the rates at which gas should be manufactured and sold, as well as the manner in which the gas factories should be erected and the pipes laid. I do not feel myself at liberty to close my eyes to the proviso. Presumably it was meant to be read in connection with the whole section. But if I did, it would be unavailing. The context shows that the last clause was not intended to confer upon the city council plenary power to regulate rates, as well as the manner in which gas factories should be erected and pipes laid down. The mere laying of gas pipes, and the installation of gas plants, together with their repair, are the subject matter of a power widely separable in circumstance and in substance, from power

to deal with the rates at which gas shall be manufactured and sold. The first belongs naturally to the city whose streets are to be occupied, for it is related intimately with the supervision of streets; the latter, with equal reason, is foreign naturally to the city, for the city is one of the parties in interest; and power to regulate prices ought not, in the usual course of affairs, to go to a party interested. Until there is legislation, more unmistakable than the language used in this section, to indicate a purpose to grant the city power to fix rates, I shall not hold that such was the legislative intent. Unquestionably the power resides somewhere in the state, but until consciously delegated to some other body it remains in the state's general repository of power, the general assembly of the state.

"I may add that in this interpretation, I am but following the opinions of Mr. Francis Adams, Mr. Wm. G. Beale, Mr. C. S. Darrow, and Mr. John W. Green, rendered by them severally as corporation counsel, as also what I take to be the opinion of Mr. Walker, during his incumbency of that office."

The opinions referred to are printed at length in an official publication entitled "Opinions of the corporation counsel and assistants from January, 1872, to March, 1897," which was published in the latter year "by direction of the city council under the supervision of the corporation counsel," Mr. William G. Beale. These opinions, emanating from the legal department of the principal city of the state, the officers of which are charged with the duty of rendering such opinions, and upon the precise question, involving as well the power of the city of Peoria as that of the city of Chicago, are entitled to great consideration. Chicago Charter of 1863, c. III., § 7, L. 1863, p. 50; City and Village Act,

Art. VI., §§ 2, 3, L. 1871–1872, pp. 236, 237; Mun. Ord., 1881, p. 192, 1890, p. 428, 1897, vol. 1, p. 15; *People* v. *Kipley*, 171 Illinois, 44, 77; *People* v. *Fidelity and Casualty Co.*, 153 Illinois, 25, 39; *Potter* v. *Hall*, 189 U. S. 292, 298, 300; *Southern Pacific Railroad Co.* v. *Bell*, 183 U. S. 675, 682, 685; *Hewitt* v. *Schultz*, 180 U. S. 139, 156, 157.

The power conferred is the power of "regulation" in respect of the streets and alleys, and the power to fix rates of charge by public utility corporations using the streets or alleys is never to be implied as incident to such power of regulation.

In *St. Louis* v. *Western Union Telegraph Co.*, 149 U. S. 465, 471, it was pointed out that this power to fix rates was not incident to a power to regulate the use of streets, Mr. Justice Brewer saying:

> "The relation of a telephone or telegraph company to its patrons, after the use of the streets has been granted, does not affect the use, and power to regulate the use does not carry with it by implication power to regulate the dealings between the corporation having such use and its individual patrons."

In *City of St. Louis* v. *Bell Telephone Co.*, 96 Missouri, 623, 629, the court, by Black, J., said:

> "The city places some reliance on its general power to regulate the use of the streets. This power extends to new uses as they spring into existence from time to time, as well as to uses common and known at the time of the dedication or grant of the power to the municipal corporation. *Ferrenbach* v. *Turner*, 86 Mo. 416. The erection and maintenance of telephone poles is one of these new uses; and is a proper use of the streets. *Julia Building Ass'n* v. *Bell Telephone Co.*

88 Mo. 258. That the company is subject to reasonable regulations prescribed by the city, as to planting its poles and stringing its wires and the like, is obvious. Such regulations have been obeyed by this defendant.

"Conceding all this, we are at a loss to see what this power to regulate the use of the streets has to do with the power to fix telephone charges. The power to regulate the charges for telephone service is neither included in nor incidental to the power to regulate the use of streets, and the ordinance cannot be upheld on any such ground."

In the recent case of *State ex rel. Garner* v. *Missouri & K. Telephone Co.* (Missouri Supreme Court, June 1, 1905), 88 S. W. Rep. 41, a city charter had been framed under a constitutional grant of such power to the city "for its own government, consistent with and subject to the constitution and laws of this state," and under an enabling act of the legislature pursuant thereto authorizing the proposed charter "to provide for regulating and controlling the exercise by any person or corporation of any public franchise or privilege in any of the streets or public places of such city." The charter so framed contained an express provision authorizing the city to fix the maximum rates for telephone service, but it was held that this provision was unauthorized and void. Referring to the power of the city to frame a charter for its own government, the court said (p. 43):

"The regulation of prices to be charged by a corporation intrusted with a franchise of a public utility character is within the sovereign power of the state that grants the franchise or that suffers it to be exercised within its borders, and that power may be with

wisdom and propriety conferred on a municipal corporation; but it is not a power appertaining to the government of the city, and does not follow as an incident to a grant of power to frame a charter for a city government."

And, referring to the power given the city to regulate and control the use of the streets, the court said (p.44):

"Under the power the city may regulate the planting of poles, wires, etc., or require the wires to be put under ground, or do anything within reason to render the use of the street by the private corporation as little of injury to the public as may be. But the section does not confer on the city the power to regulate the prices to be charged by the telephone company for its service to the inhabitants of the city."

In *State* v. *Sheboygan*, 111 Wisconsin, 23, 38, 39, the court, by Bardeen, J., said:

"The fixing of maximum charges for use of telephones or service in the city is said to be a lawful police regulation to prevent extortion. This is based upon the assumption that the power of police control possessed by the city is unlimited. Such is not the fact. Such power is inherent in the state, and is a necessary attribute of sovereignty. . . . The power to regulate charges was not included in or incidental to the power to regulate the manner of using streets. There was not the remotest relation between them. The attempt of the city to justify its position on that ground must fail."

In the case of *In re Pryor*, 55 Kansas, 724, it was held that a municipality did not have the power to fix maximum gas rates under a general grant of power to regulate, and the court, by Martin, C. J., said (pp. 724, 728, 729):

"In certain cases the state may fix and regulate

the prices of commodities and the compensation for services, but this is a sovereign power, which may not be delegated to cities or subordinate subdivisions of the state, except in express terms or by necessary implication. . . . Under the section of our statute hereinbefore fully quoted, a gas or water company may lay its pipes and mains through the streets of a city only with the consent of the municipal authorities, and *under such regulations as they may prescribe*; but the regulations are only as to the laying of pipes and mains, and have nothing to do with the price of the gas or water passing through the pipes and supplied to consumers."

In *Old Colony Trust Co.* v. *City of Atlanta*, 83 Fed. Rep. 39 (affirmed 88 Fed. Rep. 859), District Judge Newman said (pp. 43, 44):

"First, the power of 'regulation' does not necessarily embrace the power to fix rates of charge. There are many matters for it to cover without embracing this latter power. The city unquestionably has the right, within any reasonable limit, to regulate the speed of cars and other matters connected with their movement on the streets; where poles shall be placed in the case of overhead wires; how wires shall be located, and their location with reference to other wires and the safety of the same; and to do many other things which might be noted with reference to the occupancy of the streets, protection to life and limb thereon, and all such matters as involve the safe and orderly use of the streets over which it has, under the legislature, full power and control. . . . We hold, moreover, that, before the city can exercise the power to fix rates of fare for a street-railroad company, it must obtain that power in express terms, or it must arise by necessary implication from the words used in the legislative act. The power of the state over the

> subject-matter need not be discussed. We are dealing with the power of a municipality, a creature of the legislature, which derives all its authority from the legislature, and can only act within the limits of the legislative grant."

In *Lewisville Natural Gas Co.* v. *State*, 135 Indiana, 49, 52, the court held that a legislative grant of authority to a municipality to provide "regulations for the safe supply, distribution and consumption of natural gas" did not confer power to fix the price of such gas, and unanimously overruled the contrary decision in *Rushville* v. *Rushville Natural Gas Co.*, 132 Indiana, 575, 584, rendered the year before by a divided court. In its opinion in the *Lewisville* case, the court quoted the rules of construction for the ascertainment of municipal powers as laid down by Judge Dillon and approved by the Supreme Court of Illinois in numerous cases (cited *supra*, p. 8, *et seq.*), and added (p. 52):

> "There is not a word or a syllable to be found in this act indicating that the general assembly had in view any other purpose than that of securing the safe supply and use of natural gas. To secure the safe supply and use of natural gas is one thing, and to fix the price at which gas shall be supplied is another and quite a different thing. In our opinion, it was not the intention of the general assembly to confer, by the act above set out, the power to regulate the price at which natural gas should be furnished. It follows that the conclusion reached in the case of the *City of Rushville* v. *Rushville Natural Gas Co.*, *supra*, was erroneous and should be overruled."

The *Lewisville* case has ever since been followed in Indiana without dissent; and the rule that the specific power to fix the price of gas is not to be in-

cluded in a general municipal power of regulation is firmly established in that state. *City of Noblesville* v. *Noblesville Gas, etc., Co.*, 157 Indiana, 162, 166; *Muncie Natural Gas Co.* v. *City of Muncie* (Ind. 1903), 66 N. E. 436, 438; *Rushville Nat. Gas Co.* v. *Morristown* (Ind. App. 1903), 66 N. E. 179, 181.

In *Schroeder* v. *Gas & Water Co.*, 20 Pa. Superior Ct. 255 (1902), statutory power of a city "to make ordinances, by-laws, rules and regulations, not inconsistent with the constitution and laws of the commonwealth, for the maintenance of the peace, good government and welfare of the city, and its trade, commerce and manufactures" (which power was said by the court to be "but a defined statement of the police power of any municipality") was held not to include the power to fix rates for water to be supplied by a water company.

To the same effect are *State ex rel. City of St. Louis* v. *Laclede Gas Light Co.*, 102 Missouri, 472, 486; *Wabaska Electric Co.* v. *City of Wymore*, 60 Nebraska, 199, 202; *Tacoma Gas & Electric Light Co.* v. *Tacoma*, 14 Washington, 288, 293; *Detroit Citizens' St. Ry. Co.* v. *City of Detroit*, 64 Fed. Rep. 628, 639; *Cleveland City Ry. Co.* v. *City of Cleveland*, 94 Fed. Rep. 385, 396, affirmed 194 U. S. 517. And a diligent search has failed to disclose the decision of any court to the contrary.

The case of *Commonwealth* v. *Gage*, 114 Massachusetts, 328, is not, as the head note may seem to indicate, authority for the proposition that municipal power to fix a maximum fare for the carriage of persons in hackney carriages may be derived from a simple grant of authority contained in the Massachusetts General Statutes, c. 29,

§ 14, "to make regulations for carriages." An examination of that section together with other authorities cited in the opinion, shows that there could have been no intention of basing the municipal power to fix the rates of hackney coachmen on that provision alone. The power which the city of Boston exercised had been expressly and unequivocally conferred upon it by statute, and this source of its power must have been in the mind of the court when its short opinion was rendered. The statute was probably so familiar to court and counsel that there was no occasion to refer to it at length in the opinion, and no question as to the sufficiency of municipal authority appears to have been raised or discussed. The section of the General Statutes referred to in the opinion (section 14 of c. 29) expressly recognizes as unimpaired "the right of a city to make by-laws relating to the same subject." The opinion also refers to *Commonwealth* v. *Stodder*, 2 Cush. 562, 574, and *Commonwealth* v. *Duane*, 98 Massachusetts, 1. In the latter case, the existence of sufficient municipal authority was assumed without reference to the statute conferring it. In the former case, however, the authority of the city to regulate hackney coachmen under the statute of 1796, c. 32, is cited, section 6 of which act reads in part as follows:

> "And be it further enacted, that a major part of the selectmen be authorized and empowered to make such rules and regulations, establishing the rates and prices to be paid for the carriage and conveyance of persons in said hackney coaches within the limits of the town of Boston, as they may from time to time judge reasonable, regard being had to the time and distance."

This power of the selectmen was not abrogated by the charter of the city of Boston (Mass. L. 1821, c. 110) enacted pursuant to the second article of amendment to the Massachusetts Constitution, adopted in 1820. On the contrary, section 13 of the charter expressly confirms and reinvests all of the pre-existing powers of the selectmen "in the mayor and aldermen, as hereby constituted, as fully and amply as if the same were herein specifically enumerated." The effect of the city charter was only to change the form, not the powers, of the city government. *Hill* v. *Boston*, 122 Massachusetts, 344, 356.

To avoid misunderstanding, it should be emphasized that the power here referred to is a power to *regulate* charges, *i. e.*, to establish at any time what they shall be, or what they shall not exceed. This is totally distinct from a power to fix charges as a condition of the grant of the right to occupy or tear up the streets, or to prosecute any business within the municipal limits. Where a municipality has exclusive control over its streets, it may grant rights in them upon such reasonable terms as it may see fit, including a limitation on the charges which the party using the streets may require the public to pay for the services rendered. Such a limitation of charges is merely an exercise of the contractual powers of a municipality, and has nothing whatever to do with its police power, or with any power analogous thereto. *People* v. *Suburban R. R. Co.*, 178 Illinois, 594, 604; *People's Gas Light & Coke Co.* v. *Hale*, 94 Ill. App. 406, 420; *Freeport Water Co.* v. *Freeport City*, 180 U. S. 587, 593, 598; *Decatur Gas Light Co.* v. *City of Decatur*, 120 Illinois, 67, 68.

The decisions in *Union Traction Co.* v. *City of Chicago*, 199 Illinois, 484, and the *Water* cases, so-called (*City of Danville* v. *Danville Water Co.*, 178 Illinois, 299; 180 Illinois, 235; 186 Illinois, 326; 180 U. S. 619; *Rogers Park Water Co.* v. *Fergus*, 178 Illinois, 571; 180 U. S. 624; *Freeport Water Co.* v. *Freeport*, 186 Illinois, 179; 180 U. S. 587), also tend strongly to sustain the proposition that the city has no such power of regulation as is claimed in the case at bar. In the *Traction* case, it was held that two subdivisions of the same section of the City and Village Act conferring power (*forty-second*) "to license, tax and *regulate* hackmen, draymen, omnibus drivers, carters, cabmen, porters, expressmen, and all others pursuing like occupations, *and to prescribe their compensation*," and (*ninety-sixth*) "to pass all ordinances, rules, and make all regulations proper or necessary to carry into effect the powers granted," conferred authority to fix maximum street car fares. A careful consideration of the statutory provisions involved in that case will show that the legislature fully understood the limited scope of a general municipal power to *regulate* and clearly expressed its intention that such power should have only limited scope and should not include the power to fix maximum charges. This is apparent when it is appreciated that, after conferring the general powers "to license, tax and *regulate*," the legislature, in order to confer power to fix charges, deemed it necessary to add the words, "*and to prescribe their compensation*."

In the *Water* cases, it was held, among other things, that section 1 of article 10 of the City and Village Act

(1 Starr & C. Ann. Stat., 2d ed., p. 786) conferring municipal power "to authorize any person or private corporation to construct and maintain the same [water works] *at such rates as may be fixed by ordinance*, and for a period not exceeding thirty years," was sufficient to authorize the fixing of maximum water rates by various municipalities throughout the state. The decision on this point in each case was based solely upon the plain expression, "such *rates* as may be fixed by ordinance," certainly not upon any implication from the general power to regulate water works and water companies or to pass and enforce police ordinances found elsewhere in the same statute. 178 Illinois, 311–312; 180 U. S. 587, 593, 601.

B.

AS TO THE SIXTY-SIXTH SUBDIVISION OF SECTION 1, ARTICLE V, OF THE CITY AND VILLAGE ACT.

Subdivision *sixty-sixth* of section 1, article V, of the City and Village Act of 1872, confers power—

> "To regulate the police of the city or village, and pass and enforce all necessary police ordinances."

It would surely be an extraordinary stretch of language to hold that this general grant to the city council of power to regulate the police of a city and to pass and enforce necessary police ordinances was intended by the legislature to invest the city council with the governmental or legislative power to regulate rates. The statute does not delegate to the city council general police power but simply power to pass and enforce "necessary police ordinances." There must needs be a vast difference between a grant of power to regulate the police of a city or village and to pass police ordinances,

and a delegation of the police power of a state. Speaking of the latter, Mr. Justice Harlan said, in *New Orleans Gas Co.* v. *Louisiana Light Co.*, 115 U. S. 650, 661: "In its broadest sense, as sometimes defined, it includes all legislation and almost every function of civil government."

In the pending case of *Mills* v. *City of Chicago*, 127 Fed. Rep. 731, where the court decided the precise question now under consideration, Circuit Judge Grosscup said (p. 734):

> "It is plain to me that the sixty-sixth section, while granting power to regulate the police of the city or village, cannot be enlarged to include power to regulate the prices of gas. The power delegated by the state to the city is not the police power of the state. To so construe it would be to invest the city with nearly all the powers of the state—make the city practically a state by itself. Such manifestly was not the purpose of the section."

The consequence of now holding that a grant of power to pass and enforce all "necessary police ordinances" included a power to regulate the price of gas, water, telephones, electric lights, warehousemen, etc., etc., would be a great deal more than merely sustaining this particular ordinance. It would necessarily involve holding that the provision quoted was intended to grant to the smallest village as well as to the largest city unlimited police power, as absolute as that of the state itself, according to the broadest view of police power that has ever been taken; for, if the phrase "necessary police ordinances" covers the regulation of the price of gas, it must also cover not merely the

regulation of prices for all other public services, but the regulation of all other acts except those relating to taxation and finance. In fact, if clause 66 could receive the interpretation now contended for by the city, all but four or five of the other ninety-five clauses in article V would be superfluous. In order to sustain the city's contention, a rule of statutory construction hitherto unknown in jurisprudence must be formulated and declared.

It must be clearly evident to the court, as the only reasonable and true construction, that the legislature simply intended to confer upon the municipalities of the state the power to regulate their local police or constabulary, as it is termed in England, and to pass such necessary police ordinances as are appropriate or adequate to protect the public morals, the public health and the public safety and to promote the good order and peace of the community.[1]

The saying is, indeed, trite that most of the confusion in the law results from the use of inappropriate or indefinite terminology. It would obviously tend to avoid much confusion if the term, "police power" were confined and limited to those restraints upon private rights and liberties or to those punishments which the morals, health, or peace of the community may require, and if other legislative enactments, such as the regulation of the rates of public carriers, warehousemen and those

[1] 4 Blackstone Com. 162; Bentham's General View of Public Offenses (Edinborough ed. of Works, Part IX, p. 157); *Wilkie* v. *City of Chicago*, 188 Illinois, 444, 450–451; *Wice* v. *C. & N. W. Ry. Co.*, 193 Illinois, 351, 353.

engaged in more or less public occupations, were embraced within the term "general governmental or legislative powers." Rules observed by the courts in construing statutes relating to public health, morals, or peace, have no application whatever to many statutes relating to the use of property, the carrying on of trade or business, etc. For example, it has been repeatedly held that the right to exercise the police power cannot be parted with by the legislature because "no legislature can bargain away the public health or the public morals."[1] Yet, a legislature could clearly grant to a railroad, gas, or water company the right to charge fixed rates, and such a grant, duly accepted and based on consideration, would be held to be a contract protected by the federal constitution. Nevertheless, it could be suggested, as we have seen above, that such a grant would be a bargaining away of the police power, because the right to regulate charges has been said to be embraced within the police power. Many other examples might be given to illustrate that the loose use of the term "police power" is misleading, that this term should be confined to statutes or regulations affecting the public health, morals, or safety, and that other subjects of legislation, such as the regulation of rates, should be recognized as coming within the scope of those general governmental powers which are inherent in the legislative branch of our form of republican government. A classification of this kind would simplify the consideration of many cases, and would avoid much apparent conflict. Rules which are wise and necessary in construing police

[1] *Stone* v. *Mississippi*, 101 U. S. 814, 819.

power in the narrower sense indicated, would then be recognized at once to be not at all applicable to the discussion of other governmental powers.

Professor Thayer, in a note to his work "Cases on Constitutional Law," part II, 693, comments on the misuse of the term "police power," and, among other things, says:

> "Discussions of what is called the 'police power' are often uninstructive from a lack of discrimination. It is common to recognize that the subject is hardly susceptible of definition, but very often, indeed, it is not perceived that the real question in hand is that grave, difficult, and fundamental matter,—what are the limits of legislative power in general? . . . But often, the discussion turns upon the true limits and scope of legislative power in general,—in whatever way it may seek to promote the general welfare."

So, also, in *Lake Shore & Mich. South. Railway* v. *Ohio*, 173 U. S. 285, 297, Mr. Justice Harlan said:

> "It may be that such legislation is not within the 'police power' of a state, as those words have been sometimes, although inaccurately, used. But in our opinion the power, whether called police, governmental or legislative, exists in each state, by appropriate enactments not forbidden by its own constitution or by the Constitution of the United States, to regulate the relative rights and duties of all persons and corporations within its jurisdiction, and therefore to provide for the public convenience and the public good."

And in the late case of *Knoxville Water Co.* v. *Knoxville*, 189 U. S. 434, 437, Mr. Justice Holmes, delivering the opinion of the court, said that it was "unnecessary

to consider whether the regulation of water rates is properly to be classed as a police power."

The court has not yet been called upon to differentiate "police powers" from "general governmental powers," but it cannot be doubted that when an appropriate case requires it to pass upon the subject, it will make the distinction and point out that the term "police power" should be confined to the narrower sense which we have indicated.

But the police power of a municipality is clearly something very much more limited than that of a state. A municipality has no powers inherent in sovereignty. Its police power is just as strictly limited by its charter as is any of its other powers. In fact, the broader the view taken of the inherent police power of a state, the more strikingly it contrasts with the limited and derivative police power of a municipality. No state, it is safe to say, has ever made a general grant to any municipality of such police power as the state itself possesses, to be exercised, within the corporate limits, as fully as the state could exercise it. On the contrary, such police power as is granted is always a restricted power, in some states broader and in others narrower, but always limited to what the legislature may regard as the needs of the municipality and its inhabitants. Hence Judge Dillon, in referring to municipal police power in general, does not treat it as a comprehensive power, granted as such, but merely as the aggregate of such particular powers as the legislature has seen fit to grant in regard to matters of police. He says: "Many of the powers exercised by municipalities fall within what is known as

the *police power* of the state, and are delegated to them to be exercised for the public good. Of this nature is the authority to suppress nuisances, preserve health, prevent fires, to regulate the use and storing of dangerous articles, to establish and control markets, and the like." (Dillon's Mun. Corps., sec. 141.)

In *Wilkie* v. *Chicago*, 188 Illinois, 444, 450, the city had passed an ordinance requiring each master plumber to pay a license fee of thirty dollars a year and imposing penalties for performing any plumbing work without taking out such license. The legislature had also prescribed certain conditions upon which plumbers might exercise their calling. A bill was filed to enjoin the enforcement of the ordinance, and the Supreme Court said:

> "A city has no inherent power to license any occupation or to exact a license fee from any person. The power to do so must be found in its charter, and it must be either expressly given or be a necessary incident to the carrying out of a power so granted. The power must be plainly and unmistakably authorized by the legislature. In this case, the power to enact sections 1415 and 1421 is claimed by virtue of clause 66 of section 1 of article 5 of the act for the incorporation of cities and villages, which gives the city council power 'to regulate the police of the city or village, and pass and enforce all necessary police ordinances,' and clause 78 of the same section, which authorizes the council 'to do all acts, make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.' If a city council attempts to exercise the powers so conferred, it is, of course, necessary that there should be some substantial relation between the means employed and the end authorized by the charter. *An ordinance passed in fulfillment of the objects embraced within the provisions*

in question must have some tendency to promote the public health, morals, security, comfort and welfare or to suppress disease. So far as this record shows, there was no connection whatever between the ordaining by the city council of sections 1415 and 1421 and the police power or the promotion of health or the suppression of disease. The bill to which the demurrer was interposed sets out the sections already quoted, and they are the only ones before us. The requirement of a license, with the exaction of a license fee, may be a proper and convenient means of regulating the business, but if there was any provision of the ordinance, in connection with the license under section 1415, designed to promote health or suppress disease, or coming within the exercise of the police power, it does not appear. Manifestly, it does not improve the health of the public or suppress disease to collect $30 from a plumber.

"There is no more relation between the public health and the collection of $30 from a person engaged in plumbing than there would be from a person engaged in any other business or occupation which in no way affects the public health. So far as the record shows, the city has done nothing except make a demand for $30 per year from each plumber, and there is not a trace of regulation for the public health or comfort or suppression of disease in the provision. As a mere exaction of money could not have the slightest tendency toward the ends contemplated by the clauses of the charter relied upon, the demurrer could not be sustained on the ground that such exaction was an exercise of the powers conferred by such clauses. The city has no power to tax the occupation of plumber, and does not claim to have such power."

This case is particularly instructive, because it demonstrates that the power to pass police ordinances is al-

ways confined within narrow limits and does not include the governmental power to regulate rates or license occupations. Otherwise, the court would have held that the power to pass police ordinances, if commensurate with what is usually the police power of the state, would necessarily have included the power to license plumbers or any other occupation.

So, also, the power granted by the City and Village Act to enact and enforce all necessary police ordinances (the very power under which the ordinance now in question was attempted to be passed) was held in the case of *Wise* v. *C. & N. W. Ry. Co.*, 193 Illinois, 351, 353, not to authorize an ordinance forbidding passengers from getting on or off trains in motion, unless permitted by those in charge, a regulation which, no one would doubt, was within the police power of the legislature. In that case, the court said:

> "Clause 66 of paragraph 62, article 5, of the act for the incorporation of cities and villages, provides that the city council shall have power 'to regulate the police of the city and pass and enforce all necessary police ordinances.' This is the provision of the statute relied on as conferring power on the city to pass the ordinance, and it can be sustained, if at all, only under the police power conferred on the city by this provision of its charter. In *Culver* v. *City of Streator*, 130 Ill. 238, in defining the police power, we said (p. 243): 'That power may be defined, in general terms, as comprehending the making and enforcement of all such laws, ordinances and regulations as pertain to the comfort, safety, health, convenience, good order and welfare of the public.' This definition is certainly broad enough to cover all the power the city had to pass the ordinance. The provision of the general in-

> corporation act is a delegation by the general assembly to the city of Chicago of police power to pass and enforce all necessary police ordinances—that is, ordinances necessary for the comfort, safety, health, convenience, good order and welfare of its inhabitants. . . . It is difficult to conceive of the necessity, as a police regulation, for such an ordinance, and it is only necessary police ordinances that the city is authorized to pass. True, by the word 'necessary,' 'indispensable' was not meant, but only such ordinances as would be conducive to, or beneficial or effective in, the promotion of the comfort, safety, health, convenience, good order, or general welfare of the municipal public."

See also *Kiel* v. *City of Chicago*, 176 Illinois, 137, 141; *Huesing* v. *City of Rock Island*, 128 Illinois, 465, 477.

Illustrations such as the above might be multiplied, but it must be sufficiently clear that the police powers of municipal corporations are not unlimited, and that no attempt to exercise municipal police powers can be upheld by a court unless it be clearly shown to have been authorized by the legislature.

In *State* v. *Sheboygan*, 111 Wisconsin, 23, it was contended that the fixing of maximum charges for the use of telephones in the city was a lawful police regulation to prevent extortion. The court said (p. 38):

> "This [contention] is based upon the assumption that the power of police control possessed by the city is unlimited. Such is not the fact. *Such power* is inherent in the state, and is a necessary attribute of sovereignty. It does not pass to the minor divisions of government except by express grant or by necessary implication from other powers granted."

So, in *In re Pryor*, 55 Kansas, 724, 728, it was said:

> "In certain cases the state may fix and regulate the prices of commodities and the compensation for services, but this is *a sovereign power*, which may not be delegated to cities or subordinate subdivisions of the state, except in express terms or by necessary implication."

It may even be questioned whether the words "or by necessary implication" do not go too far. No instance of any grant of such a power by implication was referred to, and none has been found after the most painstaking research.

See the very recent case of *State ex rel. Garner* v. *Missouri & K. Telephone Co.* (Missouri Sup. Ct., June 1, 1905), 88 S. W. Rep. 41, 43.

Upon this point it need only be added that if the language of clause 66 above quoted is so comprehensive as to include all the police powers which the legislature itself, as the sovereign legislative body, could exercise, most of the cases decided in Illinois in limitation of the powers of municipal corporations were entirely erroneous. The cases cited from the courts of Illinois, holding that particular powers did not exist in municipalities, related to matters which were clearly within the general police power of a legislature, if we use that term in its broadest sense. In each case, the power existed, as it exists in almost every municipality in the country, to adopt police ordinances, but until very recently the view has never been seriously advanced that the grant of the power to regulate the police or constabulary of a city or village and to pass necessary police ordinances

was commensurate with the governmental police power of the state itself.

CONCLUSION.

For these reasons, it is submitted that the city council of Peoria did not in 1900 possess the power to fix and regulate the price of gas.

WASHINGTON, October 30, 1905.

WILLIAM D. GUTHRIE,
Of counsel for Darius O. Mills.

APPENDIX.

(L. of Ill. 1905, p. 110.)

An Act to confer upon the city of Chicago the power and authority to sell surplus electricity and to fix the rates and charges for the supply of gas and electricity for power, heating and lighting furnished by any individual, company or corporation to said city of Chicago and the inhabitants thereof.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

That upon the adoption of this act in the manner hereinafter provided the city of Chicago shall have the power and authority to sell surplus electricity for heat, light and power within the corporate limits of said city, and is hereby empowered to prescribe by ordinance maximum rates and charges for the supply of gas and electricity for power, heating and lighting furnished by any individual, company or corporation to such city and the inhabitants thereof. Such rates and charges to be just and reasonable and may be fixed for a period not exceeding five years and in case the corporate authorities of any such city shall fix unjust and unreasonable rates and charges, the same may be reviewed and determined by the circuit court of the county in which said city is situated: *Provided*, that nothing in this act contained shall be construed as enlarging the powers now conferred by law upon said city to own, construct or acquire electric lighting plants, or as permitting said city to sell electricity so long as the same is needed for light, heat and power for municipal purposes.

§ 2. This act shall not be in force until the question of its adoption shall first have been submitted to the electors of such city and approved by a majority of those voting thereon. The city council of the city of Chicago may direct by ordinance that the question of the adoption of this act by the city of Chicago, be submitted to popular

vote at any general, city or special election in and for the entire city coming not sooner than thirty (30) days from and after the passage of such ordinance. The city clerk of said city shall certify the passage of such ordinance to the proper election officials and it shall thereupon be the duty of such election officials to submit the question of the adoption of this act by the city of Chicago to popular vote. The city clerk of the city of Chicago shall also give at least thirty (30) days' notice of such election by publishing a notice thereof in one or more newspapers of general circulation within such city.

§ 3. The ballots to be used at such election shall be in the following form:

For the adoption of an act entitled "An act to confer upon the city of Chicago power and authority to sell surplus electricity and to fix the rates and charges for the supply of gas or electricity and to fix the rates and charges for the supply of gas or electricity for power, heating and lighting furnished by any individual, company or corporation to said city of Chicago and the inhabitants thereof."	Yes	
	No	

If a majority of the votes cast upon said proposition at said election shall be voted for the adoption of this act it shall thereby and thereupon be adopted by and be in force in the city of Chicago.

Approved May 18, 1905.

FILE COPY.

No. 33.

Office Supreme Court U. S.
FILED
NOV 27 1905
JAMES H. McKENNEY,
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1905.

PEORIA GAS AND ELECTRIC COMPANY,
Appellant,

vs.

CITY OF PEORIA,
Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Brief on Behalf of the City of Chicago, Party to Another Pending Case, Involving the Question of the Power of Cities in Illinois to Fix the Price of Gas.

JAMES HAMILTON LEWIS,
Corporation Counsel,
Solicitor for City of Chicago.

HENRY M. ASHTON,
Special Counsel for City of Chicago,

DAVID K. TONE,
Of Counsel.

WASHINGTON, NOVEMBER 21, 1905.

GEO. HORNSTEIN CO., PRINTERS, CHICAGO

the streets, the question occurs what regulation was there intended. The word "regulate" was a familiar word in legal nomenclature at the time the act in question was passed. The Federal Constitution provides, Article 1, Section 8, Clause 3, that Congress shall have power "to regulate commerce with foreign nations and among the several states and with the Indian tribes."

The rule is settled by a long line of decisions of this court and other courts that the word "regulate," as used in the Federal Constitution, conferred upon Congress the right to prescribe what taxes, duties and imposts might lawfully be levied upon interstate commerce, and to prescribe the maximum rates to be charged by public service corporations, engaged in such commerce.

It is plain that the legislature intended that the manner and method of laying gas pipes in the public streets should be regulated by the city council. It is equally plain that the legislature intended that gas companies could erect their factories and lay down their pipes in the streets and alleys of any city or village, subject to such further regulations as such city or village might by ordinance impose. It is equally clear that the word "regulations," as used in the last clause of Subdivision Thirteenth, referred to the exercise by the city or village of such portion of the police power of the state as was essential to prevent said gas companies from imposing upon the citizens unreasonable charges, or making against said citizens unreasonable discriminations.

It is a familiar rule that a public service corporation may be required, under the police power of the state, to do two things:

First: To furnish its commodities at a reasonable price.

Second: To furnish to every citizen upon equal terms.

The two methods of regulating gas companies last referred to were unquestionably the ones the legislature of this state had in mind when the City and Village Act above referred to was passed. It is unreasonable to assume that the broad and comprehensive language contained in the last clause of Subdivision Thirteenth would have been used had the legislature only intended to regulate the laying of gas pipes within the public streets, for that question had already been covered by prior particular and specific language, dealing with that very subject.

But counsel tells us that the general language, "subject to such regulations as any such city or village may by ordinance impose," should be construed to mean the same as the particular language above quoted in reference to regulating streets.

Independently of the absurdity of such a contention as a general principle of statutory construction, we must here bear in mind that the doctrine contended for by counsel is also directly contrary to the rule laid down by the legislature of Illinois for construing general provisions.

The Revised Statute of Illinois of 1845, page 473, reenacted in the revision of March 5, 1874, Hurd's Revised Statutes of Illinois, 1899, Chapter 131, Section 1, paragraph one, is as follows:

> "All general provisions, terms, phrases and expressions shall be liberally construed in order that the true intent and meaning of the legislature may be fully carried out."

The legislature of Illinois, then, was familiar with the rule of construction above quoted, and when it imposed upon corporations erecting gas factories within the state

the condition that said companies should be subject to such regulations as cities or villages might by ordinance impose, the legislature knew that the general language in reference to regulations should be liberally construed for the purpose of carrying out the intent of the legislature.

Construing the word "regulations" to mean nothing more than what had already been contained in the particular language above quoted, would be adopting a strict rather than a liberal construction, and would be directly contrary to the statute above quoted, and the repeated decisions of the Supreme Court of Illinois, construing that statute.,

People v. *City of Chicago*, 152 Ill., 546-51.
People v. *Hinrichsen*, 161 Ill., 223-27.
Givins v. *City of Chicago*, 186 Ill., 399-403.
People v. *Harrison*, 191 Ill., 257-66.

In *People* v. *City of Chicago*, *supra*, the court, applying this statute, said, page 551:

> "The General Assembly, in the act revising the law in relation to the construction of the statutes, lays down as the first rule to be observed the following: 'All general provisions, terms, phrases and expressions shall be liberally construed, in order that the true intent and meaning of the legislature may be fully carried out.' (2 Starr & Curtis Ann. Stat., Chap. 131, Sec. 1.) A thing within the intention is regarded as within the statute though not within the letter, and a thing within the letter is not within the statute unless within the intention."

In *People* v. *Hinrichsen*, *supra*, a narrow technical construction was contended for, similar to the one made by counsel for Mills in this case and the Supreme Court of Illinois said, page 227:

> "The legislature of this state, by the provisions of chapter 131 of the Revised Statutes, declared certain rules for the construction of statutes then in force or that might be thereafter enacted, and by the first and second subdivisions of section 1 of that chapter it is provided: 'First, all general provisions, terms, phrases, and expressions shall be liberally construed, in order that the true intent and meaning of the legislature may be carried out; second, words in the present tense include the future.' The legislature having declared these among other rules of construction of statutes, in the enactment of the law now under discussion must be considered as having used the language contained therein with knowledge of the principles of statutory construction and interpretation as adopted by the courts and declared by legislation."

In *People* v. *Harrison*, *supra*, the court, after quoting the above statute to the effect that general provisions, terms, phrases and expressions should be liberally construed, said:

> "The intention is to be gathered from the necessity or reason of the enactment and the meaning of words enlarged or restricted according to the true intent. (*Castner* v. *Walrod*, 83 Ill., 171; *Cruse* v. *Aden*, 127 *id.*, 231.) That which is implied is as much a part of the statute as that which is expressed."

It may be well, before proceeding further in this discussion, to call attention to another rule of statutory construction contended for by counsel for Mr. Mills, which is equally unsound. The sixty-sixth subdivision of Section 1 of Article V of the City and Village Act confers upon cities and villages the power "to regulate the po-

lice of the city or village, and pass and enforce all necessary police ordinances."

It is contended by counsel for Mr. Mills that the last portion of that subdivision, namely "to pass and enforce all necessary police ordinances" refers merely to the constabulary of the city or village and does not confer upon the municipality general police powers within its borders.

As we shall hereafter note, the construction contended for is directly contrary to the repeated decisions of the Supreme Court of Illinois. The last portion of the subdivision above quoted has been construed by the Supreme Court of the State of Illinois to mean that the municipality has, under that clause, the power to pass all ordinances that are necessary for the protection of the public health, the public morals and the public welfare.

And, as we shall also hereafter point out, the power to regulate the price charged by a public service corporation, doing business wholly within the municipality and dealing in a commodity that is indispensable for the health, safety and comfort of its inhabitants, is a part of the police power which was delegated to cities and villages under the sixty-sixth subdivision above quoted.

Counsel has invoked the doctrine that the enumeration of particular powers, by implication excludes from the legislative intent powers not enumerated, and in support of that proposition has cited a large number of authorities. And counsel argues that because the power to fix the rate of wharfage and dockage, and to prescribe the compensation of hackmen, and to establish ferries and toll bridges, and to fix tolls thereon, and to fix water rates, was conferred upon municipalities by express language to that effect, therefore the power to fix the rate at which

gas should be sold, not being enumerated in any of these provisions, is to be excluded from the legislative intent, and this, even though language amply sufficient to confer that power is contained in other independent general provisions of the statute.

The rule of interpretation in question is not to be applied in the unqualified manner claimed by counsel. Endlich on the Interpretation of Statutes, thus states the limitation of the rule, page 559, Section 399:

> "Whether the expression of one thing is to operate as the exclusion of another, is clearly a mere question of intention, to be gathered from the statute by the usual means and rules of interpretation."

And Sutherland, in his work on Statutory Construction, Volume 2 (2nd Edition), Section 491, page 916, thus states the same rule:

> "This maxim, like all rules of construction, is applicable under certain conditions to determine the intention of the lawmaker when it is not otherwise manifest. Under these conditions it leads to safe and satisfactory conclusions; but otherwise the expression of one or more things is not a negation or exclusion of other things."

The rule contended for is also subject to another important qualification. It is true that the enumeration of certain things in a statute by implication excludes other things not enumerated, but the rule has no application where in one portion of the statute certain particular things are enumerated and in another portion of the statute, general language is used that was clearly intended to embrace other things than the ones before enumerated in the other part of the statute.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1905.

PEORIA GAS AND ELECTRIC COMPANY,
Appellant,

vs.

CITY OF PEORIA,
Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Brief on Behalf of the City of Chicago, Party to Another Pending Case, Involving the Question of the Power of Cities in Illinois to Fix the Price of Gas.

STATEMENT OF THE QUESTION.

The appellant, the Peoria Gas and Electric Company, is a corporation organized under the General Incorporation Act of the State of Illinois and subsequent to the adoption by the state of the City and Village Act, approved April 10, 1872. On the 4th day of September, 1900, the City of Peoria passed an ordinance which provided that the maximum price of gas furnished to the City of Peoria and its citizens should not thereafter exceed the sum of 75 cents per thousand cubic feet, and prescribing the quality of said gas, and providing penalties for

violation of the provisions of said ordinance. The complainant, the Peoria Gas and Electric Company, filed a bill in equity in the Circuit Court of the United States for the Northern District of Illinois, to restrain the enforcement of said ordinance upon two grounds:

First: That the complainant could not afford to manufacture gas at the price above specified, and that the ordinance in question would compel it to conduct its business at a loss, in violation of the 14th amendment to the Federal Constitution.

Second: Upon the ground that the City and Village Act of the State of Illinois, approved April 10, 1872, and in force July 1, 1872 (1 Starr & Curtis Ann. Stat., 2 Ed., pp. 689-707), did not confer upon cities and villages within the State of Illinois, the right to regulate the price of gas.

On October 15, 1900, the City Council of the City of Chicago passed a similar ordinance to the one above described, also fixing 75 cents per thousand cubic feet as the maximum price to be charged for gas within the City of Chicago.

Darius O. Mills filed a bill in equity against the City of Chicago and the People's Gas Light and Coke Company in the Circuit Court of the United States, for the Northern District of Illinois, seeking to enjoin the enforcement of the above ordinance on the alleged ground that the corporation had refused to act, and that suit is now pending and undisposed of, and that bill also questioned the right of cities and villages in the State of Illinois during the year 1900 to regulate the price of gas.

The City and Village Act of 1872 confers upon city councils within the State of Illinois, certain powers that are enumerated in some ninety-six subdivisions, the ones

particularly pertinent to the question here under consideration being Subdivisions 9, 11, 13 and 66 of Section 1, Article V, found on page 274 in Hurd's Revised Statutes of Illinois for 1899:

> "Section 1. The city council in cities, and president and the board of trustees in villages, shall have the following powers: * * * "
>
> "Ninth: To regulate the use of the same. (Referring to streets.) * * * "
>
> "Eleventh: To provide for the lighting of the same. (Referring to streets.) * * * "
>
> "Thirteenth: To regulate the openings therein (in streets) for the laying of gas or water mains and pipes, and the building and repairing of sewers, tunnels and drains, and erecting gas lights: Provided, however, that any company heretofore organized under the general laws of this state, or any association of persons organized, or which may be hereafter organized for the purpose of manufacturing illuminating gas to supply cities or villages, or the inhabitants thereof, with the same, shall have the right, by consent of the common council (subject to existing rights), to erect gas factories, and lay down pipes in the streets or alleys of any city or village in this state, subject to such regulations as any such city or village may by ordinance impose."
>
> "Sixty-sixth: To regulate the police of the city or village, and pass and enforce all necessary police ordinances."

Counsel has discussed the above subdivisions under two heads, numbered respectively A and B, and we will pursue the same classification in our reply.

A.

AS TO SUBDIVISION THIRTEENTH OF SECTION 1, ARTICLE V OF THE CITY AND VILLAGE ACT.

Subdivision Thirteenth of Section 1 of Article V of the City and Village Act of 1872, above quoted, provides that corporations organized for the purpose of manufacturing illuminating gas to supply cities or villages with the same, shall have the right, "by consent of the common council (subject to existing rights), to erect gas factories, and lay down pipes in the streets or alleys of any city or village in this state, subject to such regulations as any such city or village may by ordinance impose."

This statute, then, confers upon gas companies the right to carry on their business and occupy the streets and alleys of cities and villages within the State of Illinois, upon two specific conditions:

First: That said companies must obtain the consent of the common council of said cities; and

Second: They must submit themselves thereafter "to such regulations as any such city or village may by ordinance impose."

The appellant, the Peoria Gas and Electric Company, derived its sole right to erect its factory and to lay down its pipes in the streets and alleys of the City of Peoria from the statute above quoted, and it obtained its consent to engage in the business of manufacturing gas from the City of Peoria.

In passing the ordinance reducing the price of gas to 75 cents per thousand cubic feet, the City of Peoria was but exercising its power of prescribing by ordinance the regulations under which the appellant should conduct its business within the City of Peoria.

The contention of appellant now is that the words, "subject to such regulations as any such city or village may by ordinance impose," refer solely to regulations respecting the laying of the pipes of the gas company in the streets and alleys of such city. The most superficial examination of this clause in connection with other language bearing on the question of streets and alleys will show that that contention is untenable.

Subdivision Ninth, in reference to streets, says: "To regulate the use of the same." The first part of Subdivision Thirteenth says: "To regulate the openings therein (in streets) for the laying of gas or water mains and pipes and the building and repairing of sewers, tunnels and drains and erecting gas lights."

It would appear, then, that the legislature, in Subdivision Ninth, above quoted, and in the first clause of Subdivision Thirteenth, just quoted, had fully and specifically covered the right of the city to regulate the laying of gas pipes and mains in the streets. There was no occasion and no necessity for any further language on that subject.

The regulation referred to in the last clause of Subdivision Thirteenth must of necessity, by a familiar rule of statutory construction, have had reference to other kinds of regulations.

It is a settled rule in the construction of statutes that full force and effect should be given to every phrase and word, and the presumption should never be indulged in that any clause or phrase is meaningless or is a mere repetition of prior language.

Discarding, then, as untenable, the contention that the "regulations" referred to in the last clause of Subdivision Thirteenth, had reference to the laying of gas pipes in

for Mills, was a case where the telephone company derived its right to use the public streets for its business directly from the state. The court held that the right of the municipality "to regulate its streets" did not confer upon the city the right to regulate telephone charges. As we have already observed, the legislature of this state has conferred upon municipal corporations two distinct powers on this subject:

First: The power of a municipality to regulate its streets and the laying of gas pipes therein.

Second: To impose upon gas companies erecting factories within the State of Illinois from time to time "such regulations as any such city or village may by ordinance" prescribe.

The last power above referred to, which is broad and comprehensive in its terms, was never conferred at all upon the municipalities in the numerous cases relied upon by counsel for Mills, and hence they are not in point in this case.

The case of the *City of St. Louis* v. *Bell Telephone Co.*, 96 Mo., 623, is of the same character. There the telephone company was granted a franchise from the state to transact its business, and the only power conferred upon the municipality was "to regulate its streets." The court there merely held that the power to regulate streets did not carry with it the power of the municipality to prescribe the maximum rates. Had the Missouri statute contained a specific provision in reference to the power of the municipality to regulate its streets and had the telephone company been given the right to transact its business within the municipality, subject to such regulations as the city council might by ordinance impose,

then the question before that court would have been similar to the one here under consideration.

The case *In re Pryor*, 55 Kansas, 724, is of the same character, for there the only power conferred upon the municipality was to regulate the laying of the pipes and mains in its streets.

The case of *Lewisville Natural Gas Co.* v. *State*, 135 Ind., 49, is of the same character. The question there before the court was the construction of a single section of the Statute of Indiana that conferred upon boards of trustees of the town the right, "to provide by ordinance reasonable regulations for the safe supply, distribution and consumption of natural gas within the respective limits of such town." The court there properly held that the word "safe" was a limitation upon every word in the act and that the legislature were there dealing solely with provisions for the public safety. This thought was strengthened, the court said, from the well known dangerous and combustible character of natural gas.

It is unnecessary to point out that the wide and comprehensive powers embraced within the statute here under consideration were not contained in that act, and it is also important to bear in mind that the State of Indiana had no statute providing that general terms, phrases and expressions should be liberally construed.

Other cases are cited by counsel for Mills along the same line, but an examination of the facts of each particular case will disclose that none of the cases have any tendency to sustain the contention of counsel.

Counsel also quotes from Judge Grosscup's opinion, to the effect that the interpretation contended for by counsel for Mills had been placed upon this statute by a num-

ber of the corporation counsels of the City of Chicago. The pages on which those opinions are to be found are not pointed out either by counsel or by Judge Grosscup. A painstaking examination of the opinions by the various corporation counsels named fails to sustain the claim thus broadly made. Some of the counsel referred to did not at all give the opinion contended for, others referred to the question in a rather vague and cursory way.

The opinions of Mr. Adams and Mr. Darrow, which are the only ones that deal with it in any extended way, are based upon lines of reasoning that are directly contrary to the decisions of the Supreme Court of Illinois above quoted from, and hence are entitled to no weight.

In this regard we may say that it is true that where the meaning of the statute is doubtful, the long continued and uniform construction placed upon that statute by the highest law officers of the government enacting it is entitled to some weight. Such opinions, however, should be disregarded if they are based upon reasons that are contrary to the decisions of the courts. The opinions are only entitled to weight in cases of doubt. There is no doubt in the case at bar. The power to regulate is conferred by plain and unambiguous language.

Again, it is only the opinion of the highest law officer of the government enacting the law that is entitled to such weight. The act in question was passed by the legislature of the State of Illinois. To come within the rule contended for, counsel would have to show that his view had been sustained by the uniform and long continued opinions of the attorney generals of the state.

It is plain that the opinions of some of the corporation counsels of one municipality in the state are not entitled to any consideration, for if each municipality within the

State of Illinois could make a law on this subject by its own practical construction, the result would be that we would have as many different laws on this question as there would be divergent views by the corporation counsels of the respective municipalities. Chicago would have one law, Peoria a different one, and Springfield still another. An argument that leads to consequences so absurd must necessarily be erroneous.

B.

AS TO THE SIXTY-SIXTH SUBDIVISION OF SECTION 1, ARTICLE V OF THE CITY AND VILLAGE ACT.

Subdivision Sixty-sixth of Section 1, Article V of the City and Village Act of 1872 confers upon the city council the power "To regulate the police of the city or village and pass and enforce all necessary police ordinances."

Much is said in the argument of counsel for Mills about the opinion of Circuit Judge Grosscup in the case of *Mills* v. *City of Chicago*, 127 Fed., 731. Judge Grosscup held in that opinion that the power "to pass and enforce all necessary police ordinances" was not intended to invest the municipality with the general police powers of the state, so far as the municipality was concerned, but that the Sixty-sixth Subdivision of said section related merely to regulating the constabulary of cities and villages. To use Judge Grosscup's exact language, page 734: "The section looked, not to the police powers of the state in its wide constitutional sense, but to police in the sense of a local constabulary."

Judge Grosscup probably was not aware when he rendered this opinion, that the identical language had been passed upon by many decisions of the Supreme Court of

Illinois, and that Judge Grosscup's contention was utterly refuted by the opinions of that court.

It is unnecessary to remind this court that where a statute has received a settled construction by the highest court of the state enacting it, that construction is binding upon the Federal Court. It is therefore useless to determine as an original proposition whether Judge Grosscup's opinion is right or wrong, for the very question now under consideration had already been decided adversely to Judge Grosscup's ruling by many prior decisions of the Supreme Court of Illinois.

The identical argument contained in Judge Grosscup's opinion was addressed to the Supreme Court of Illinois in the case of *McPherson* v. *Village of Chebanse*, 114 Ill., 46. The village there had enacted an ordinance prohibiting persons from keeping open their places of business in the village on Sunday. There was no authority conferred upon the cities and villages in the state to pass a Sunday-closing ordinance, except by virtue of Subdivision Sixty-sixth of Section 1 of Article V above quoted. Speaking on this very point, the court said, page 49:

> "Subdivision 66, of Section 62, Article 5, of the 'Act to Provide for the Incorporation of Cities and Villages' (Rev. Stat. 1874, p. 221), gives the power 'to regulate the police of the city or village, and pass and enforce all necessary police ordinances.' Under this grant of power, we are of opinion there is found authority for the passage of the ordinance.
>
> "It is insisted this clause only refers to the organization and regulation of a police force. We think this a too narrow construction—that the clause is not limited in its application to police officers, but may extend to and embrace a subject matter of police regulation, under the general police power of the state."

The *McPherson* case, *supra*, then, is a direct authority for the proposition that Subdivision Sixty-sixth, *supra*, confers upon municipalities within the state the general police powers of the state, so far as said power is necessary for the carrying on of the municipal government, and that the power there conferred is not, as Judge Grosscup contended, limited to the regulation of the village constabulary. That opinion has ever been adhered to by the Supreme Court of Illinois.

The same question was again before the Supreme Court of Illinois in the case of *City of Chicago* v. *Gunning System*, 214 Ill., 629. It was there held that the power to regulate the manner and method of using signs and bill boards upon private property was properly embraced within paragraph 66, *supra*. After quoting with approval the *McPherson* case and the *Gundling* case above referred to, the court said:

> "Paragraph 66 confers upon cities power to regulate the police of the city or village and pass and enforce all necessary police ordinances. We held in the case of *McPherson* v. *Village of Chebanse*, 114 Ill., 46, that the power conferred under this clause is not limited in its application to the organization and regulation of a police force, but it is extended to embrace the subject matter of police regulations under the general police power of the state."

Again, the court, in the same case, speaking of the nature of the general police power of the state that was conferred upon cities and villages by Subdivision 66 of Section 1, Article 5, said:

> "The police power of the state is an adherent or plenary power, which enables the state to prohibit all things hurtful to the comfort, safety and welfare

> ize municipalities to pass reasonable ordinances covering said subject. Paragraph 66 confers upon cities power 'to regulate the police of the city or village and pass and enforce all necessary police ordinances.' We held in the case of *McPherson* v. *Village of Chebanse*, 114 Ill., 46, that the power conferred under this clause is not limited in its application to the organization and regulation of a police force, but it is extended to embrace the subject matter of police regulation under the general police power of the state."

The case above quoted from is on all fours with the case at bar. Every argument advanced by counsel in support of the contention that a failure to enumerate the regulation of the price of gas when the other subjects were under consideration, by implication excluded the granting of that power in subsequent subdivisions, are equally applicable to the *Gunning* case above quoted from.

It appears in the language of counsel "that the legislature was entirely familiar with the terms usually employed" in conferring upon a municipality the power to regulate the use of signs and hand bills. The failure, however, of the legislature in the *Gunning* case, *supra*, to use in reference to regulation of hand bills upon private property "the same exact and simple language deemed by it necessary for that purpose" in the case of the use of signs upon public property, was not regarded by the Supreme Court of Illinois as any reason for holding that the power to regulate the use of signs upon private property was not embraced within the general language of subdivision sixty-sixth.

Again, in *McPherson* v. *Village of Chebanse*, 114 Ill., 46, the question before the court was whether the Village of Chebanse had under the City and Village Act of

Illinois, above referred to, the power to prohibit persons from keeping their places of business within the village open on Sunday.

The ninety-sixth subdivision of Section 1 of Article V of the City and Village Act contained numerous specific and precise enumerations of powers conferred upon cities and villages of exactly the same kind as those in reference to providing for the closing of places of business on Sunday, and yet not one word is said in any of the ninety-six subdivisions in reference to the powers of cities and villages to prescribe Sunday closing ordinances.

Counsel for the Village contended in the *McPherson* case, *supra*, that the power was found in Subdivision 66 of Section 1 of Article V, which reads as follows: "To regulate the police of the city or village, and pass and enforce all necessary police ordinances."

Counsel for the defendant contended that the granting of power to pass certain specific regulations should be construed as if the statute in express terms had inhibited the granting of powers not enumerated, and counsel cited in support of his proposition, page 46, the case of *City of Cairo* v. *Bross*, 101 Ill., 475, the very case so much relied upon by counsel for Mills in his brief.

The court held that this argument was untenable and said, referring to the general grant of power contained in Subdivision Sixty-sixth of Section 1, Article V:

> "Under this grant of power we are of opinion there is found authority for the passage of the ordinance."

Sunday-closing regulations were thoroughly familiar to our Anglo-saxon forefathers. Such laws had been in

existence in England and in the Atlantic States for generations. The legislature had delegated to the municipality by exact and simple language, numerous police powers of a kindred character and the legislature were familiar with Sunday-closing regulations and with the kind of language that could be used for the purpose of granting the authority to municipalities to make such regulations in the same precise and direct way that other powers had been granted.

All of the above arguments, however, were held untenable by the Supreme Court of Illinois in the *McPherson* case, *supra*, and the existence of the power to enact Sunday-closing ordinances under the general grant of Subdivision Sixty-sixth was fully sustained.

We might multiply authorities from the Supreme Court of Illinois on this question, but a further citation of them would seem unnecessary. It must be clear that the doctrine contended for by counsel has no application to the question here under consideration. But it is unnecessary to pursue this discussion any further for there is no law that requires the legislature to use exactly the same words in conferring legislative powers upon a municipality.

The word "regulate" as applied to any business or calling, means the right to prescribe the maximum charges that can be made by persons engaged in that line of business. The precise question was before the Supreme Court of Colorado in *Golden Canal Co.* v. *Bright*, 8 Colo., 148. There an act of the legislature was passed, conferring upon county commissioners authority "to regulate the use of water for irrigation." The question before the court was whether the language above quoted was sufficient to authorize the commissioners to

prescribe the maximum price to be charged for water. The court held that such power was conferred by the language above quoted from the title of the act, and said, page 149:

> "In the law before us the legislature attempts to regulate the use of water thus furnished and sold by respondent and others who engage in such enterprises. Prominent among the matters involved in this regulation is the price to be charged; the phrase, *regulating the use*, is not confined to the forbidding of injustice in the distribution, the prevention of waste or the apportionment in times of scarcity; it is broad enough to include the frustration of unfair exactions, and the fixing of reasonable rates. To deny this would be to give the expression a narrow and restricted meaning, instead of construing it liberally, with a view to carrying out the legislative intent."

In *Denninger* v. *Recorder's Court*, 145 Calif., 629, the question before the court was whether the Constitution of the State of California had delegated to municipal corporations the right to regulate gas rates. The provision conferring that power was as follows:

> "Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws."

Speaking of the authority conferred by this language the court said, page 631:

> "By this section the people have made a direct constitutional grant of the police power of the state to every municipal corporation for local purposes. It is conceded by the petitioner that the general grant of legislative power in the constitution of a state

includes the power to regulate gas rates by statute, and that this power may be delegated by statute to municipal corporations. If this is so, and if the regulation of gas rates by the state is an exercise of the police power, it would be difficult to say why, in the absence of more specific provisions in our Constitution, relating to this matter, the municipal corporations of the state could not by virtue of the section above quoted, adopt and enforce within their local limits ordinances as comprehensive, both as to the establishment of rates and the infliction of penalties, as the statutes which the legislature is competent to enact for the state at large."

By Article 1, Section 8, Clause 3 of the Federal Constitution, Congress was given the power "to regulate commerce."

It has been held that the word "regulate" as used in that instrument, conferred upon Congress, the exclusive right to prescribe what taxes, duties and imposts might lawfully be imposed upon Interstate Commerce and to regulate the maximum rates to be charged by public service corporations engaged in such commerce.

Speaking on this subject, this court said in *Welton* v. *State of Missouri*, 91 U. S., 279-81:

> "The power to regulate conferred by that clause upon Congress is one without limitation; and to regulate commerce is to prescribe rules by which it shall be governed,—that is, the conditions upon which it shall be conducted; to determine how far it shall be free and untrammelled, how far it shall be burdened by duties and imposts, and how far it shall be prohibited."

So this court, in defining the word "regulate," said, in *St. Louis* v. *Western Union Telegraph Co.*, 149 U. S., 465-9:

> *"The word 'regulate' is one of broad import. It is a word used in the Federal Constitution to define the power of Congress over foreign and interstate commerce and he who reads the many opinions of this court will perceive how broad and comprehensive it has been held to be."*

In *Kaiser* v. *I. C. R. R. Co.*, 18 Fed., 151, the question before the court was whether the power "to regulate commerce with foreign nations and among the several states," conferred upon Congress by the Federal Constitution, embraced the power to regulate the maximum rates to be charged by railroad companies engaged in interstate commerce.

In determining the meaning of the word "regulate," as used by our Constitution, the court said:

> "To fix or limit the charges for such transportation is to regulate commerce."

In *Ames* v. *Union Pacific Railroad Co.*, 64 Fed., 165, Mr. Justice Brewer, speaking on the same subject, said, page 178:

> "But within the scope of the word 'regulation' as commonly used, is embraced the idea of fixing the compensation which the owners of railroad property shall receive for the use thereof."

Numerous cases are cited by counsel to the effect that the right of a municipal corporation to control its streets and alleys and to regulate the laying of telephone and telegraph wires, does not confer upon the municipality any authority to regulate rates. We do not at all dispute the soundness of those decisions. For instance, the case of *State* v. *Sheboygan*, 111 Wis., 23, cited by counsel

All the cases cited by counsel for Mills are where the legislature had enumerated particular things and then remained silent. Of course, under those conditions, the things not enumerated were by implication excluded. The rule contended for has never been applied to a case where there was in one portion of the statute an enumeration of particular things, and in another portion of the statute, a general provision which clearly was intended to embrace other things than the ones contained in the particular enumeration.

The case of *City of Chicago* v. *Gunning System*, 214 Ill., 628, contains a forcible refutation of counsel's contention. That case involved the construction of the very statute now under consideration, namely Subdivision Sixty-sixth of Section 1, Article V of the City and Village Act. There, the City of Chicago passed an ordinance, regulating the size and method and manner of placing bill boards upon private property within the City of Chicago. A bill in equity was filed by the Gunning System, claiming that while the City of Chicago had the right to regulate signs and bill boards upon streets and alleys and public property of the city, no such power had been conferred upon the city council by the legislature of the state, in reference to regulating the placing of signs on *private* property.

Section 1 of the City and Village Act of the State of Illinois, dealing with the power of the city council, contains ninety-six subdivisions. Subdivision Seventeenth of said Act is the only one that contains any reference to regulating bill boards and signs, and that subdivision conferred upon the city council the following powers:

> "To regulate and prevent the use of streets, sidewalks, and public grounds for signs, sign-posts, awn-

ings, awning-posts, telegraph posts, horse troughs, rocks, posting hand bills and advertisements."

The doctrine contended for by counsel was there invoked that the granting to the city council of the power to regulate the use of signs and hand bills upon the streets, sidewalks, and public grounds, without saying one word about regulating the use of signs and hand bills upon private property, by necessary implication excluded the power of the city council to make any regulations in reference to placing said signs and bill boards upon private property.

The Supreme Court of Illinois held that the particular enumeration of the right of the city to regulate the use of signs on the streets and public places did not by implication exclude the right of the city to regulate the use of signs upon private property and further held that that power was conferred by Subdivision Sixty-sixth of Section 1, Article V.

Speaking on this subject, the court there said, page 634:

> "It is claimed by appellee that under clause 17 of section 2 (should be section 1), article 5, of the City and Village Act, the city can regulate and prevent the use of signs on the streets and public places of the city; that this is a specific provision relating to signs, and that the power thus expressly granted cannot be added to by the general language found elsewhere in the act, and that there is no authority conferred by statute upon municipalities to regulate bill boards erected upon private property. We cannot agree with this contention, but are of the opinion that there is ample power, under paragraphs 66 and 75 of section 1, article 5, of the City and Village Act (Hurd's Stat., 1899, p. 277), to author-

sonal view and was neither intimated nor suggested by the Supreme Court of Illinois. Indeed, the very reasoning of that court by which it reached the conclusion that the City of Chicago had no such power would as a necessary corollary deny the exercise of that power by the state. The inhabitants of a state have the right to go and come when and where they will, so long as so doing does not interfere with anybody else's rights or the public welfare.

Counsel for Mr. Mills says that it would "tend to avoid much confusion" if the term "police power" were confined to narrower limits and if it were so interpreted as not to embrace the power of the government to regulate the rates charged by public service corporations.

We wish to suggest that there is at the present time no confusion on that subject. The question we are here dealing with is the construction of a statute of the State of Illinois. The right of the government to regulate the charges of a person devoting his property to a public use has been held by the Supreme Court of Illinois to be the exercise of the police power. The decisions in that regard are uniform and conclusive. Those decisions are binding upon this court in interpreting the same statute. Again, we do not believe there is any confusion on that subject in the decisions of this court. Ever since the decision by this court of *Munn* v. *Illinois*, 94 U. S., 125, governmental regulations in reference to the rates charged by persons devoting their property to a public use have been interpreted by this court to be the proper exercise of the police power. Counsel's argument that a definition of the police power different from the one previously expounded and declared by the courts, would tend to avoid confusion, should be addressed to the legislative and not to the judicial department of the government.

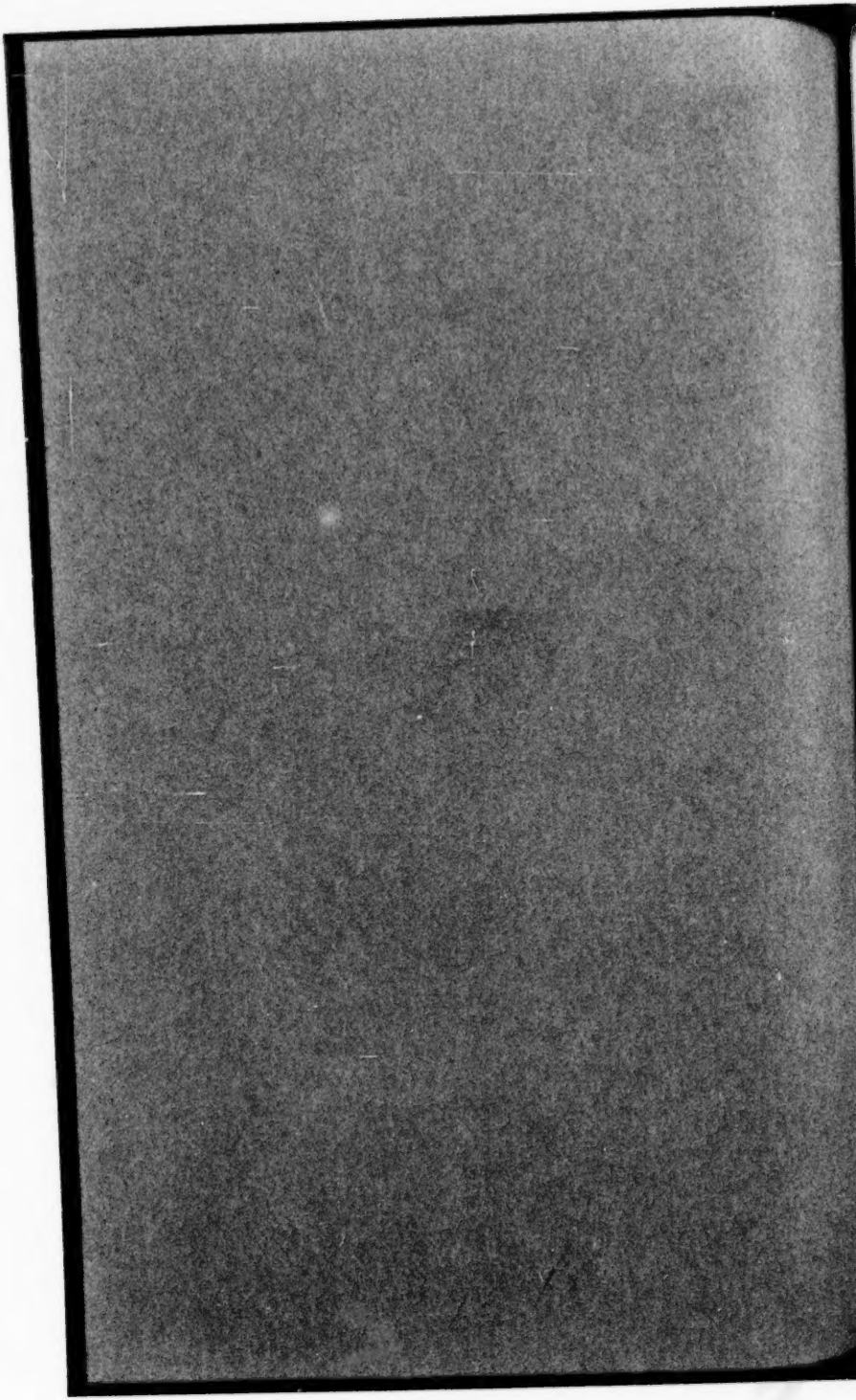
Counsel also calls attention to the act of the State of Illinois, approved May 18, 1905, conferring upon the City of Chicago the power to sell surplus electricity and to fix the rates and charges for the supply of gas and electricity and argues that the passage of that act tended to prove that the city had no power prior thereto to regulate the price of gas. The passage of that law in no wise tends to prove that the power to regulate the price of gas did not exist in prior legislative acts. The law in question gave the City of Chicago the power to sell surplus electricity, something that it had never possessed under any prior grant of power. Again, it provides that where the manufacturer of gas claims that the rate fixed is unreasonably low, an application must be made to the Circuit Court of the county in which said city is situated for the purpose of determining that question. Those were important innovations in the law that fully justfied the legislature in enacting it. Again, the power of the city to regulate the price of gas had been questioned and the fact that the legislature out of abundant caution inserted that provision into the present act in no wise tends to show that the power had not been conferred under previous legislative acts.

We respectfully submit that the power to regulate the price of gas during the year 1900 was vested in the city council of the City of Peoria as a part of the police power of that municipality, delegated to it under the statutes of the State of Illinois.

JAMES HAMILTON LEWIS,
Corporation Counsel,
Solicitor for City of Chicago.

HENRY M. ASHTON,
Special Counsel for City of Chicago.

DAVID K. TONE,
Of Counsel.



Supreme Court of the United States.

No. 33.—October Term, 1905.

Peoria Gas and Electric Company, Appellant, *vs.* The City of Peoria, Appellee. } Appeal from the Circuit Court of the United States for the Northern District of Illinois.

[January 2, 1906.]

This was a bill filed in the Circuit Court of the United States for the Northern District of Illinois by the Peoria Gas and Electric Company to restrain the enforcement of an ordinance passed by the defendant, fixing the price of gas. A decree was entered in the Circuit Court dismissing the bill, and the case was brought directly here, as involving a constitutional question.

The facts are these: Prior to 1899 for a period of many years the Peoria Gaslight and Coke Company had manufactured and furnished gas to the city of Peoria and its citizens. The business had been profitable and the stock was valuable. In 1899 the plaintiff company was organized to construct gas works in Peoria, and that city, by ordinance, granted to it a franchise permitting it to construct and operate a gas plant and lay mains along certain streets, etc. It is charged that in order to obtain this franchise the promoters of the plaintiff company represented that it was to be a Peoria company and enterprise, and that it would furnish gas at a cheaper rate than the old company; that in fact it was a scheme of certain Chicago capitalists, who, as soon as the ordinance was passed and the plant constructed, appeared as owners of substantially the entire stock. After the new company was organized and its plant constructed the two companies became competitors, the competition being so sharp that in the early summer of 1900 the new company lowered its price to 30 cents per thousand cubic feet for both light and fuel gas. On July 31, 1900, after a conference between the managers of the two companies, both raised the rate to $1.15 net for light and 75 cents net for fuel gas, to take effect August 1, 1900. The announcements of this raise in the rates were published in the Peoria papers on the same day, each announcement being in precisely the same language. On September 4, 1900, the city passed an ordinance providing that the maximum price for gas should be 75 cents per thousand cubic feet, and that the gas to be furnished should not be less than eighteen candle power.

of society, and may be termed the 'law of overruling necessity.'"

In the case of *Gundling* v. *City of Chicago*, 176 Ill., 340, the court said, again construing the power conferred upon cities and villages under Paragraph 66 of Section 1, Article 5 of the City and Village Act, and said, page 348:

> "The regulation of the police power is hardly susceptible of exact definition, as the exigencies of each case are varying, and the cases are innumerable where the health of the inhabitants of the municipality may be in some degree endangered. When the city council considers some occupation or thing dangerous to the health of the community, and in the exercise of its discretion passes an ordinance to prevent such a danger, it is the policy of the law to favor such legislation, as being humane and essential to the preservation and protection of the community. Municipalities are allowed a greater degree of liberty of legislation in this direction than any other."

Again in *Culver* v. *City of Streator*, 130 Ill., 238, the court thus defined the police power of the state:

> "That power may be defined in general terms as comprehending the making and enforcement of all such laws, ordinances and regulations as pertain to the comfort, safety, health, convenience, good order and welfare of the public."

Again in *Wice* v. *C. & N. W. Ry. Co.*, 193 Ill., 351-53, the police power conferred upon cities and villages by Subdivision 66 of Section 1 of Article V of the City and Village Act was thus defined:

> "The provision of the general incorporation act is a delegation by the general assembly to the City of Chicago of police powers to pass and enforce all

necessary police ordinances—that is ordinances necessary for the comfort, safety, health, convenience, good order and welfare of its inhabitants."

It is difficult to conceive how powers more comprehensive could have been conferred upon a municipality than the ones embraced within the interpretation of Subdivision 66, *supra*, by the Supreme Court of Illinois in the case last quoted from.

We have quoted at great length from the decisions of the Supreme Court of Illinois, construing Subdivision Sixty-sixth of Section 1, Article V, for the purpose of showing that the powers conferred upon cities and villages by the legislature, as construed by the Supreme Court of Illinois, is wide, comprehensive and all prevailing. As this statute has been construed by the Supreme Court of Illinois, it intended to confer upon the municipality all the police power that the state itself might rightfully have conferred upon the municipality with reference to regulating the safety and welfare of the inhabitants within its borders.

Much is said by counsel for Mills about the derivative police powers of a municipality. It is true that the police power of the municipality is "derivative," but if by that language it is meant to imply that it is insignificant or unimportant, the contention is unfounded. The power of Congress is strictly derivative. Congress can exercise no power except that which in express terms or by necessary implication was conferred upon it by the Federal Constitution. Even the state legislature itself is in the exercise of derivative governmental powers. Under our theory of government, all governmental powers reside in the people and can only be exercised by any form of government, federal, state or municipal, except in so far as

governmental powers have been delegated to those respective bodies by the people.

There is no reason in law or in theory why the powers conferred upon municipalities should be construed in any other way, or subjected to any other test than are the powers conferred upon other departments of our government. Powers as important for the preservation of life, liberty and property as any ever exercised by either the state or federal government, are constantly administered by the cities and villages within the United States. The comfort, safety and welfare of millions of our inhabitants are ever dependent upon the proper exercise by municipal corporations of the functions that have been delegated to them by the state. The same broad and comprehensive rule of construction that was adopted by Justice Marshall in the celebrated case of *Gibbons* v. *Ogden*, 9 Wheaton, 1, in construing the implied powers of Congress over interstate commerce under the federal government should be adopted by our courts in construing the police powers delegated to municipal corporations.

It was fortunate, indeed, that a man possessing the pre-eminent wisdom and the matchless logic of Justice Marshall was called upon to lay down the landmark of the law in reference to the implied powers of Congress to regulate interstate commerce. Had that task devolved upon some modern judge, imbued with technical notions and narrow ideas in reference to the construction of governmental powers, it is possible that the most important power of the federal government over interstate commerce might by construction have been frittered away and the entire destinies of the nation changed.

We have already observed that under the decisions of the Supreme Court of Illinois, cities and villages are in-

vested with all the police power of the state that is necessary for the preservation of the public health, the public welfare and the public morals, so far as those powers, however, relate solely to municipal affairs.

It only remains to consider whether the regulation of rates of a gas company doing business wholly within a municipality and engaged solely in supplying its inhabitants with heat and light, is the exercise of the police power of the municipality. It is settled by a long line of authorities that the regulation of rates to be charged by a public service corporation comes within the exercise of the police power.

Munn v. *Illinois*, 4 Otto, 113-125.
Farwell v. *City of Chicago*, 71 Ill., 269.
City of Chicago v. *Rogers Park Water Co.*, 214 Ill., 212-23.
Cooley on Constitutional Limitations, 2nd Ed., pp. 734 and 735.

In *Munn* v. *Illinois*, 94 U. S., 125, this court said, in speaking of the police powers of the government:

> "Under these powers the government regulates the conduct of its citizens one toward another, and the manner in which each shall use his own property, when such regulation becomes necessary for the public good. In their exercise it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, inn-keepers, etc., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished and articles sold."

The Supreme Court of Illinois said, in *Farwell* v. *City of Chicago*, 71 Ill., 269, in speaking of an ordinance

which prescribed the maximum rates to be charged by hackmen and draymen, page 272:

> "The spirit of the ordinance is, to bring the class of carriers therein named under the police regulations of the city. It is designed to operate upon those who hold themselves out as common carriers in the city for hire, and to so regulate them as to prevent extortion, imposition and wrong to strangers and others compelled to employ them, in having their property or persons carried from one part of the city to another. This is a rightful exercise of the police power. (Cooley Const. Lim., 201.)"

Again, in *City of Chicago* v. *Rogers Park Water Co.*, 214 Ill., 212-223, the court said, in referring to an ordinance regulating the price of water, page 223:

> "In the exercise of the police power the state may require that the individual so manage and control his own property that the public health, public peace and public welfare may be conserved. Usually, the police power is invoked to restrict the owner in those uses of his property which he might have as a matter of natural right, so as to conform to the welfare of established society. It is said to be founded on two maxims: First, 'So use your own property as not to injure others;' and second, 'The safety of the people is the supreme law.' (22 Am. & Eng. Ency. of Law, 2d Ed., pp. 916-918.)"

It thus appears that under the settled decisions of the Supreme Court of Illinois, the right to regulate the maximum charges of a public service corporation is the exercise of the police power of the government. If a corporation is engaged in state commerce or in a calling wherein it deals with the people of the state at large, the right to regulate charges is the exercise of the police

power of the state. Where, however, a public service corporation, like a gas company, is given the right to do business solely within a municipality and upon the express condition that it may erect its factory and lay down its pipes and mains, subject to such regulations as the city council may by ordinance prescribe, it is plain that the right to regulate the price to be charged by such a public service corporation is the exercise of the police power of the municipality within which it transacts its business.

In *City of Chicago* v. *Gunning System*, 214 Ill., 628, the court said, in speaking of the police powers of the state that were delegated to the City of Chicago under the authority "to pass and enforce all necessary police ordinances," that it was "that inherent or plenary power which enables the state to prohibit all things hurtful to the comfort, safety and welfare of society, and may be termed the law of overruling necessity."

It is a familiar rule of law that a public service corporation must serve all persons upon equal terms. In other words, that it has no right to discriminate against individuals in the same conditions and circumstances. For instance, could the appellant Gas Company charge within the City of Peoria 75 cents per thousand cubic feet from some of its customers and exact the sum of $1.00 per thousand cubic feet from others? Suppose the appellant Gas Company should attempt to do so. Would the City of Peoria have the right to pass an ordinance and to prescribe a penalty for its violation, requiring the appellant company to deliver gas to all of its inhabitants upon terms of equality? That such a power would exist on the part of the City of Peoria we believe is unquestioned. That such a power would be the exercise of

precisely the same kind of a police power as that prescribing a maximum rate is equally unquestioned. That both of the above powers could be exercised by the municipality under the general police power of the state, delegated by it to municipal corporations under Subdivision 66 of Section 1, Article V, would follow as a necessary corollary. Or to put the question a little differently: Should the municipality pass an ordinance requiring gas to be delivered to every consumer at the same rate and prescribing a penalty for its violation, and suppose that the corporation refused altogether to deliver gas to some of its consumers, would it be seriously contended that the right to compel the delivery of gas to every consumer at the same rate, would be beyond the police power of the municipality? Or could the Gas Company withdraw its service arbitrarily and at its will from any or all of the inhabitants of the city without being subjected to municipal regulation? The supply at reasonable rates and upon terms of equality to all the inhabitants within a municipality, of gas for heating and lighting purposes is certainly a regulation that is necessary for the preservation of the health, safety and the general welfare of its inhabitants. To contend that a corporation, having obtained the right to erect its factory and lay down its mains, subject to municipal regulation, may demand a price so exorbitant that no consumer can pay it, and thus leave the inhabitants of the city in darkness and without fuel, is to argue that a municipality would be powerless to enact reasonable regulations for the preservation of the health, comfort and welfare of its inhabitants.

The cases cited by counsel for Mr. Mills from the Supreme Court of Illinois are not in any way inconsistent with the views above expressed. In the case of *Wilke* v.

City of Chicago, 188 Ill., 444, relied upon by counsel, the city passed an ordinance requiring each master plumber to pay a license fee of $30 per year and imposing a penalty for a violation of said ordinance. The court held that the ordinance in question was not the exercise of any police power of a municipality for it had no tendency to promote the health, comfort or welfare of its inhabitants, but amounted merely to taxing every person pursuing that calling, the sum of $30.

The ordinance did not aim at suppressing extortion or at regulating the manner and method of doing work within the municipality, but merely demanded point blank a certain sum of money. It is plain that the question there under consideration was profoundly different from the one now before the court.

The case of *Wice* v. *C. & N. W. Ry. Co.*, 193 Ill., 351, was an ordinance forbidding passengers from getting on or off trains while they were in motion unless permitted by those in charge and prescribing penalties for its violation.

The court denied the power of the City of Chicago to pass the above ordinance, not because the authority to do so was a state, as distinguished from a municipal power, but the power was denied solely because the ordinance had no tendency to promote the safety, welfare or health of the inhabitants of the city. The court there said:

> "It is difficult to conceive of the necessity, as a police regulation, for such an ordinance and it is only necessary police ordinances that the city is authorized to pass."

Counsel says in reference to this case that no one would doubt that the making of such a law was "within the police power of the legislature." That is counsel's per-

On September 18, 1900, the plaintiff filed this bill of complaint, setting forth its organization, the ordinance under which it was given authority to occupy certain streets and that of September 4, 1900; alleged that the latter ordinance was invalid as establishing a rate which was not renumerative and in effect confiscatory, and was thus taking private property for public use without just compensation and depriving the plaintiff of its property without due process of law. The city answered, narrating the circumstances attending the organization of the plaintiff and the passage of the ordinance authorizing it to occupy the streets and supply the city with gas, with the representation made at the time, and claimed an estoppel by reason thereof, showing also the rates which had been the result of competition, the raise in price by the two companies, charged that this was by agreement between the companies, alleged that the ordinance of September 4 was passed in good faith and to prevent extortion by the companies, and also that the rate fixed was reasonable. While the answer alleged that the fixing of the rates from the first of August was by agreement between the two corporations, it did not, in terms, plead that the agreement was in violation of any particular statute.

By consent a special commissioner was appointed to take the proofs and report the same with his findings and conclusions thereon. He took an enormous amount of testimony, the printed record in this court amounting to 1,780 pages. From it he found and reported that the rate prescribed by the ordinance of September 4 did not furnish compensation, was confiscatory in its effect, and therefore unreasonable. Exceptions were taken by both sides to different portions of his findings and conclusions of law. On a hearing before the Circuit Court the question of the reasonableness of the rates prescribed was ignored, the court found that the increase in rates on August 1, 1900, was the result of an illegal combination between the two gas companies and in violation of the Illinois anti-trust law of 1891, that, therefore, the plaintiff was not entitled to any relief against the ordinance of September 4, and entered a decree dismissing the bill.

The anti-trust act of Illinois, approved June 11, 1891, (Laws 1891, p. 206,) forbids the entering into any "pool, trust, agreement, combination, confederation or understanding . . . to regulate or fix the price of any article of merchandise or commodity," and punishes the same by fine. Sections 5 and 6 are as follows:

"5. Any contract or agreement in violation of any provision of the preceding sections of this act shall be absolutely void.

"6. Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provision of the preceding sections of this act shall not be liable for the price or payment of such article or commodity, and may plead this act as a defense to any suit for such price or payment."

Subsequently and in 1893 another act was passed, which was held by this court in *Connolly* v. *Sewer Pipe Company*, 184 U. S. 540, to constitute class legislation, and to be void. An amendment in 1897 to the act of 1891 was subject to the same objection. The Supreme Court of Illinois has since held that the act of 1891 was not repealed by the act of 1893 or the amendment of 1897, and is still in force. *The People ex rel.* v. *Butler Street Foundry*, 201 Ill. 236, 257; *Chicago, Wilmington & Vermilion Coal Co.* v. *The People*, 214 Ill. 421, 454.

Mr. Justice BREWER delivered the opinion of the Court.

This case was tried on one theory and decided on another. While that does not always and necessarily constitute error, yet, under the circumstances, as disclosed by the record, we are of opinion that injustice has probably resulted and that there should be a reversal of the decree and a further examination in the Circuit Court. As stated in the findings of the commissioner, the bill proceeds upon the theory that the ordinance of September 4, 1900, impaired the rights of contract theretofore existing between the parties, that its enforcement would constitute the taking of private property for public use without just compensation, that the penalties prescribed for a violation of the ordinance were exorbitant and not sanctioned by the laws of the State of Illinois, while the answer justified the provisions of the ordinance by the statements and representations made by the stockholders in the company to the city council at the time the plaintiff's franchise was sought, and alleged that the rate therein fixed was reasonable. On these questions the stress of the controversy was rested. The court entirely ignored them and placed its decision on the single ground that the two companies had by agreement attempted to fix their prices, and therefore came within the scope of the Illinois anti-trust law—an act which had not been in terms referred to either in the pleadings or the report of the master.

There was no positive evidence and no finding by the commissioner of an agreement between the two companies, and while from their action an inference might be drawn that they had entered into some agreement in respect to rates on August 1, 1900, neither its terms, scope nor duration were shown. It also appears from the testimony that that rate was continued by the old company only until January 1, 1901, when an even rate of one dollar per thousand was established, and that this latter rate was on September 1, 1901, also established by the new company, the plaintiff herein. Whether this action of the new company in adopting the rate which had been kept in force by the old company since January 1, 1901, was the result of agreement or an independent act on its part is not shown. It appears further that in October, 1901, the plaintiff entered into

a contract with the old company to supply it with gas for the use of its customers and that, the latter company desisting temporarily from manufacture, this contract continued in force until August 19, 1902, but this was found by the commissioner to have been a purely private business arrangement between the companies and without relation to the charges made by either to its customers. Doubtless it, together with the evidence of changes in holding of stock, tended to show at least a cessation of competition between the two companies, if not of a unity of control or agreement between them.

We shall assume that there was testimony from which the court justly found that the rates announced on August 1 were fixed by an agreement between the two companies. We shall also assume, though without deciding, that while that agreement was in force and the parties were acting under it, neither could recover for the gas that it furnished, nor could this plaintiff question the validity of the ordinance of September 4. But although the stringent provisions of the Illinois anti-trust law may apply to the case of an agreement between two gas companies fixing the price of gas, and even if while the parties are proceeding under it any party receiving gas may avoid payment therefor on that ground, and the city likewise be upheld in an ordinance establishing maximum rates which are not remunerative, yet the making of such an agreement does not subject the companies to a perpetual penalty. Parties making an agreement, unlawful by the anti-trust act, may while the agreement is in force be subject to its penalties, but whenever they cease to act under it the penalties also cease. The punishment adheres to the offense and stops when the offense itself stops. Now it is in evidence that the prices were changed by the old company on the 1st of January, 1901—five months after the alleged agreement for a uniform rate—and that for months thereafter each company was charging a different rate, but the decree was one of absolute dismissal—an adjudication that the ordinance of September 4 was valid, an adjudication which became *res judicata* for all future litigation, and this in the face of the finding by the commissioner, undisturbed by the court, that the rates established by it are not remunerative, and thus work a gradual confiscation of the property belonging to the plaintiff.

We think that under the circumstances the decree should be reversed and the case remanded with instructions either to refer it to a commissioner for further findings, with leave to take additional testimony if that be deemed necessary, showing the terms and duration of the alleged agreement between the two companies, and how far it was acted upon by them, or that the court should itself undertake this investigation and make like findings.

The decree of the Circuit Court is

Reversed.